

CAUSE NO. 2011-76724

HARRIS COUNTY, TX, ET	}	IN THE DISTRICT COURT OF
AL.,	}	
Plaintiff,	}	
	}	
v.	}	HARRIS COUNTY, TEXAS
	}	
INTERNATIONAL PAPER	}	
COMPANY, ET AL.,	}	
Defendants.	}	295th JUDICIAL DISTRICT

CAUSE NO. 2012-58016

DAO VAN PHO, ET AL.,	}	IN THE DISTRICT COURT OF
Plaintiffs,	}	
	}	
v.	}	HARRIS COUNTY, TEXAS
	}	
INTERNATIONAL PAPER	}	
COMPANY, ET AL.,	}	
Defendants.	}	125th JUDICIAL DISTRICT

CAUSE NO. 2012-66308

JIM HARPSTER AND	}	IN THE DISTRICT COURT OF
JENNIFER HARPSTER, ET	}	
AL.,	}	
Plaintiffs,	}	
	}	
v.	}	HARRIS COUNTY, TEXAS
	}	
INTERNATIONAL PAPER	}	
COMPANY, ET AL.,	}	
Defendants.	}	11th JUDICIAL DISTRICT

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF

DAVID KEITH

April 23, 2014

\*\*\*\*\*

1                   ORAL AND VIDEOTAPED DEPOSITION OF DAVID KEITH,  
2   produced as a witness at the instance of the Plaintiff,  
3   and duly sworn, was taken in the above-styled and  
4   numbered cause on the 23rd of April, 2014, from 9:30  
5   a.m. to 5:21 p.m., before Janet G. Hoffman, CSR in and  
6   for the State of Texas, reported by machine shorthand,  
7   at the office of Winstead, P.C., 600 Travis, Suite 1100,  
8   Houston, Texas, pursuant to the Texas Rules of Civil  
9   Procedure and any provisions stated on the record or  
10   attached hereto.

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22  
23  
24  
25

## INDEX

	PAGE
Appearances.....	2
Stipulations.....	1
DAVID KEITH	
Examination by Mr. Muir.....	7
Examination by Mr. Ballard.....	183
Further examination by Mr. Muir.....	189
Further examination by Mr. Ballard.....	191
Examination by Mr. Stanfield.....	192
Further examination by Mr. Muir.....	196
Further examination by Mr. Ballard.....	198
Further examination by Mr. Muir.....	199
Signature and Changes.....	200
Reporter's Certificate.....	202

## EXHIBITS

NO.	DESCRIPTION	PAGE
450	Witness's Linkedin profile	8
451	Rules for Professional Geoscientist Licensure and the Public Practice of Geoscience	26
452	Amended deposition notice	42
453	Memo dated 7-28-10 re decision document for Time Critical Removal Action at San Jacinto River Waste Pits Site	110
454	Draft memo dated 5-18-10 re design storm event: SJ Superfund Site Time Critical Removal Action	117
455	E-mail dated 9-15-10 re MIMC AOC notice of dispute	127

1	456	Letter dated 9-23-10 from Barbara Nann to Albert Axe re dispute re EPA's decision document for TCRA at SJ River Waste Pits Superfund Site	129
2			
3	457	Letter dated 9-30-10 from Albert Axe to Barbara Nann re dispute re EPA's decision document for TCRA at SJ River Waste Pits Superfund Site	130
4			
5			
6	458	Dispute resolution - final decision with attached cover letter	132
7			
8	459	Revised Final Removal Action Completion Report, SJ River Waste Pits Superfund Site, dated May 2012	144
9			
10	460	Letter stamped 7-31-12 to witness from Valmichael Leos re TCRA Cap Repair Plan	149
11	461	Letter dated 10-10-12 to witness from Valmichael Leos re cap repair on western berm, with attached questions	152
12			
13	462	Draft feasibility study report, SJ Waste Pits Superfund Site, August 2013	157
14			
15	463	Letter stamped 1-15-14 to witness from Gary Miller with comments re draft feasibility study report dated 8-2013	158
16			
17	464	Draft final interim feasibility study report, SJ Waste Pits Superfund Site, March 2014	170
18			
19	465	Letter dated 7-18-11 to witness from Commissioner Jack Morman	186
20			
21			
22			
23			
24			
25			

1                   THE VIDEOGRAPHER: Good morning. Today  
2 is Wednesday, April 23rd, 2014. The time is 9:30 a.m.  
3 We are now on the record.

4                   DAVID KEITH,  
5 having been first duly sworn, testified as follows:

6                   EXAMINATION

7 BY MR. MUIR:

8           Q. Could you state your name for us, please.

9           A. David Keith.

10          Q. Mr. Keith, have you given a deposition  
11 previously?

12          A. Yes.

13          Q. About how many occasions would you say?

14          A. Two.

15          Q. I want to just go over a couple of kind of  
16 ground rules just so we're clear that everyone  
17 understands. You know that you've been sworn in as if  
18 you were sitting in the court in front of the jury  
19 today?

20          A. Right.

21          Q. And you know that the testimony that you give  
22 today may be played for the jury, either read or your  
23 video played for the jury?

24          A. Right.

25          Q. In order to get a good, clean transcript, the

1 court reporter is going to take down everything -- all  
2 my questions, your answers, any objections, or other  
3 comments made today. But in order for that to be clean,  
4 I'd ask you to try to wait until I've completed my  
5 question before you give your answer. And I'll try to  
6 do the same for you. Can we have that agreement?

7 A. Yeah. Yes.

8 Q. Another thing that sometimes happens,  
9 especially after you get going for a while, is people  
10 nod their head or shake their head or say "uh-huh" or  
11 "huh-uh" in response. That really doesn't come out in  
12 the transcript. So from time to time, if I stop and say  
13 "Is that a yes?" or "Could you give a verbal answer?"  
14 that's the reason. I just want you to understand that  
15 we're just trying to get a clean record of what your  
16 answers are today.

17 A. Okay.

18 Q. I want to start first by talking to you some  
19 about your background. And I found some information. I  
20 want to go ahead and mark this as Exhibit 450. We're  
21 continuing exhibit numbers, so we're starting off there  
22 today.

23 (Exhibit 450 marked.)

24 Q. Let me show you what I marked as Exhibit 450.

25 MR. WILKIN: John, as we get going, we're



1 just -- we're continuing the one objection is good for  
2 all defendants?

3 MR. MUIR: Certainly.

4 Q. (By Mr. Muir) Mr. Keith, do you recognize  
5 Exhibit 450?

6 A. Yes.

7 Q. I wanted to ask you a few questions starting  
8 with your educational background. It says here that you  
9 have a bachelor's of science in geology from North  
10 Carolina State University in Raleigh that you earned in  
11 1983. Is that correct?

12 A. Yes.

13 Q. And then a master of science in geology from  
14 University of Southern Mississippi that you earned in  
15 1991. Is that also correct?

16 A. Yes.

17 Q. And then your Ph.D. in geochemistry from the  
18 Colorado School of Mines. It says 1991 to 1994. Could  
19 you explain that?

20 A. The degree was in '94.

21 Q. Okay. Do you have any other degrees, college  
22 or postgraduate degrees, that aren't reflected in  
23 Exhibit 450?

24 A. No.

25 Q. I want to ask you some, then, about your

1 professional work history. After you earned your  
2 bachelor of science in geology in '83, did you go to  
3 work then before you got your master's?

4 A. Yes.

5 Q. Tell me where you went to work then after you  
6 got your bachelor's degree.

7 A. I had several different jobs, I guess. I  
8 was -- worked in the oilfield in Wyoming for about a  
9 year. And then I joined the air force. Was in the air  
10 force from 1985 to 1990. I was active duty, and then I  
11 was a reservist from that period to about 1994.

12 Q. What were you doing working in the oil fields?

13 A. I was primarily a mud logger.

14 Q. My oldest son is doing that work right now out  
15 in Odessa.

16 A. I feel for him.

17 Q. And what were you doing in the air force?

18 A. I was a navigator.

19 Q. Where did you serve?

20 A. All over. I was -- my longest permanent  
21 station was in Keesler Air Force Base.

22 Q. Where is that located?

23 A. Biloxi.

24 Q. And then you said you left active duty in  
25 1990?

1           A.    It was about 1990, 1991, yeah.

2           Q.    Okay.  Is that when you went back to  
3 University of Southern Mississippi to get your --

4           A.    No.  I got my master's while I was in the air  
5 force while I was on active duty.  And then when I got  
6 off of active duty, I went to Colorado School of Mines.

7           Q.    Okay.  So after you -- you received your  
8 master's, you went directly to -- to Colorado School of  
9 Mines to continue your education?

10          A.    Yes.

11          Q.    And were you working during that time as well?

12          A.    Yes.  I had a part-time job at Argonne  
13 National Laboratory in Lakewood, Colorado and --

14          Q.    What type -- I'm sorry.

15          A.    And I was an active reservist for a C-130  
16 squadron in Colorado Springs.

17          Q.    What kind of work were you doing for Argonne?

18          A.    It was mostly environmental work related to  
19 carbon touch chloride in groundwater and around grain  
20 storage facilities, and things like that.

21          Q.    Were you working on sites where they were  
22 trying to clean up?

23          A.    It was more of research based.

24          Q.    Then after you got your Ph.D. in '94, what did  
25 you do then?

1           A.     Actually, while I was in school, I started  
2     working for a company called Shepherd Miller in Fort  
3     Collins, Colorado, and it was a consulting firm. The  
4     primary industry that they served was the mining  
5     industry.

6           Q.     Did you say Shepherd Miller?

7           A.     Shepherd Miller, uh-huh.

8           Q.     And what were you primarily doing for Shepherd  
9     Miller then?

10          A.     I was a staff scientist, staff geochemist.

11          Q.     How long did you stay with them?

12          A.     I'm not real good with dates, but I'll give  
13     you the best answer I can.

14          Q.     Okay.

15          A.     I think until about 1999 probably.

16          Q.     And where were you located with Shepherd  
17     Miller?

18          A.     When I was in school, I started with them in  
19     the Denver office. And then after I completed my  
20     degree, I moved up to Fort Collins and worked out of  
21     Fort Collins.

22          Q.     Can you give us an example of the kind of  
23     projects that you would have been working for or working  
24     on for Shepherd Miller?

25          A.     It was primarily in the hard rock mining

1 industry, so doing environmental analyses related to  
2 that industry.

3 Q. Who were your clients, or Shepherd Miller's  
4 clients, that you were working for?

5 A. Oh, it varied. A lot of mining companies. We  
6 had some projects with federal agencies, Bureau of Land  
7 Management, Forest Service, things like that.

8 Q. So both private companies and some public  
9 entities?

10 A. Uh-huh. Yes.

11 Q. While you were with Shepherd Miller, did you  
12 do any work on any federal Superfund sites?

13 A. Yes.

14 Q. Do you recall any of the names of those?

15 A. The primary one was probably the Iron Mountain  
16 Superfund site.

17 Q. Where was that located?

18 A. Shasta County, California.

19 Q. And what was your role in that Superfund site?

20 A. I was a project geochemist.

21 Q. After you left Shepherd Miller around 1999,  
22 where did you go at that point?

23 A. We moved to San Diego, and I worked for a  
24 chemical company called -- I'm having a mind blank  
25 here -- it was OCI. They were a soda ash mining company

1 manufacturer.

2 Q. What type of work were you doing for OCI?

3 A. I guess you would classify it as technical  
4 sales.

5 Q. Explain to me what that means.

6 A. Soda ash has a lot of different uses in a lot  
7 of different industries, and a lot of it involves, you  
8 know, using it in a way that produces a chemical  
9 reaction result that you're looking for. So I would  
10 work with clients in trying to help them achieve what  
11 they wanted to use in the product that OCI produced.

12 Q. What type of clients? Can you give us some  
13 examples?

14 A. It was highly variable. Most of it was like  
15 just part of a industrial chemical process. So some  
16 water treatment plants, some municipalities that were  
17 using soda ash as part of their water treatment for  
18 drinking water, and things like that.

19 Q. Did you do any work for any -- for any paper  
20 companies?

21 A. At OCI?

22 Q. Yes.

23 A. No.

24 Q. How long did you stay there at OCI?

25 A. Just a year.

1 Q. What did you do after that?

2 A. A couple of different things. I consulted as  
3 a contract employee to a company called Tetra Tech on  
4 some navy base realignment and closure projects. Did  
5 that on my own. Then I worked for a company called MEC  
6 Analytical.

7 Q. MEC?

8 A. Right. And then after that, I had my own sort  
9 of sole proprietor business for about a year before I  
10 joined Anchor.

11 Q. What was the name of the business, your sole  
12 proprietor business?

13 A. Prism Environmental.

14 Q. And when did you join Anchor?

15 A. I believe it was about August 2002.

16 Q. So in the time period between when you started  
17 work as a contract for Tetra Tech in around 2000 till  
18 you started at Anchor in 2002, where were you located?

19 A. San Diego.

20 Q. And did any of that work in that 2000 to 2002  
21 time period involve federal Superfund sites?

22 A. I don't think so. Probably the closest thing  
23 to that would be the base realignment closure work that  
24 we were doing for the navy, but they weren't technically  
25 Superfund sites.

1 Q. What were the nature of the problems you were  
2 dealing with on those -- on those base closures?

3 A. They were varied. A lot of groundwater  
4 issues, a lot of soil contamination issues. Those were  
5 the primary things that I got involved with personally.

6 Q. Was there any particular type of contaminate  
7 that was involved in those, or did it kind of go across  
8 the board?

9 A. It was full gamut.

10 Q. Prior to starting with Anchor in 2002, did any  
11 of your work involve dioxins?

12 A. Prior to Anchor, no.

13 Q. What about dibenzofurans?

14 A. No.

15 Q. Did any of the work prior to going to work for  
16 Anchor deal with contaminated sediments?

17 A. Yeah, quite a bit of it.

18 Q. Where did you do the work related to  
19 contaminated sediments prior to 2002?

20 A. Some at Shepherd Miller was my first  
21 introduction. Some for the navy work. MEC Analytical,  
22 that was our primary -- or my primary focus, that and  
23 stormwater. And then at Prism, that was my primary  
24 business.

25 Q. Dealing with contaminated sediments?



1           A.    Uh-huh.

2           Q.    What type of clients were you working for when  
3 you were working as Prism?

4           A.    Primarily, the port of San Diego, a little bit  
5 of navy work. And there was a group of co-permittees  
6 under a stormwater program within San Diego County that  
7 I worked for.

8           Q.    Do you remember the name of those permittees?

9           A.    There were 19 of them, and it's basically all  
10 the municipalities within San Diego County.

11          Q.    How did you come to then move to Anchor?

12          A.    We were working on a project jointly together  
13 when I was at Prism.

14          Q.    Do you recall what that project was?

15          A.    It was called Campbell Shipyards.

16          Q.    What was your position at Anchor when you  
17 started in 2002?

18          A.    I don't remember the exact title. Something  
19 like senior scientist or . . .

20          Q.    What was the principal role you were playing  
21 then? What type of work were you doing?

22          A.    Managing the Campbell Shipyard project, and we  
23 were doing a couple of watershed management plans within  
24 San Diego County.

25          Q.    How has your position or your day-to-day work

1 at Anchor changed from 2002 to the present?

2 A. Well, I'm more senior. That's -- it hasn't  
3 changed a lot. I mean, it's always been a lot of  
4 technical work associated with project management.  
5 Maybe I do a little more project management now.

6 Q. You're currently located in which Anchor  
7 office?

8 A. I'm in Ocean Springs, Mississippi.

9 Q. So you were in San Diego when you started;  
10 you're in Ocean Springs now?

11 A. Right.

12 Q. Have you been in any of their other offices?

13 A. You mean permanently? No.

14 Q. When did you move from San Diego to  
15 Mississippi?

16 A. Like I said, I'm not real good with dates, but  
17 I think it was 2003 or 2004. I'd been with Anchor about  
18 a year.

19 Q. Was there a particular job or something that  
20 caused that move?

21 A. It was more a personal issue.

22 Q. Prior to the work on the San Jacinto River  
23 Pits Superfund site, have you worked on any other  
24 Superfund sites in Texas?

25 A. Yes.

1 Q. Can you give me the names of those sites?

2 A. Lavaca Bay Superfund site and the Patrick  
3 Bayou Superfund site.

4 Q. Who were you working for or who was Anchor  
5 working for at Lavaca Bay?

6 A. Alcoa.

7 Q. And what was the nature of the contamination  
8 there?

9 A. Mercury and sediments, primarily.

10 Q. Is that Superfund site still an active site?

11 A. It's in a five-year monitoring review process  
12 at this point.

13 Q. What was your position with regard to that  
14 site?

15 A. I didn't have a whole lot of involvement in  
16 it. I did some specific tasks related to the  
17 implementation of the rod.

18 Q. So you weren't in the project coordinator  
19 position, or anything like that, for Lavaca Bay?

20 A. Right.

21 Q. What was the nature of the remedy that was  
22 implemented at Lavaca Bay?

23 A. It was a combination remedy. It was a very  
24 large site. There was a dredging component to it, a  
25 capping component to it, a natural recovery component to

1 it.

2 Q. And you also mentioned Patrick Bayou?

3 A. Right.

4 Q. Who was Anchor working for at the Patrick  
5 Bayou Superfund site?

6 A. We worked for a group that's referred to as  
7 the Joint Defense Group.

8 Q. And what's the nature of the contamination at  
9 Patrick Bayou?

10 A. There's a lot of different chemicals that  
11 we've evaluated. That site sort of runs a long list.

12 Q. PCBs an issue at Patrick Bayou?

13 A. They're one of them.

14 Q. PAHs?

15 A. Yes.

16 Q. Our are dioxins an issue at Patrick Bayou?

17 A. There are dioxins present.

18 Q. By your answer, I take it that that's not one  
19 of the primary chemicals of concern?

20 A. Well, it depends on, I guess, number one, how  
21 you define chemicals of concern. But yeah, it doesn't  
22 appear to be something that we're overly -- we're  
23 focusing on.

24 Q. And what's your role at Patrick Bayou?

25 A. It's similar. I'm project coordinator,

1 project manager for the technical work done there.

2 Q. When you say similar, similar to the position  
3 you've got at the San Jacinto River waste Pits?

4 A. Right.

5 Q. What stage is the Patrick Bayou site at?

6 A. We're working on the feasibility study.

7 Q. Have there any been any removal actions at  
8 Patrick Bayou?

9 A. No.

10 Q. What about other Superfund sites that you've  
11 worked at while you've been at Anchor, other than Lavaca  
12 Bay, Patrick Bayou, and the San Jacinto River Pits?

13 A. There's been a number of them. The ones  
14 better most active, Bayou d'Inde Calcasieu Actuary was a  
15 Superfund site during the RI; and that was converted to  
16 a state lead site for the feasibility study. It's in  
17 Lake Charles. I currently work on the Newtown Creek  
18 Superfund site.

19 Q. Where is that located?

20 A. New York City. And I've provided support on a  
21 lot of different sites.

22 Q. Are any of these other sites ones in which you  
23 fills the project coordinator role?

24 A. No.

25 Q. What about as a project manager for a

1 particular client?

2 A. I'm the project manager now for the remedial  
3 design at Bayou d'Inde.

4 Q. Who is Anchor's client on the Bayou d'Inde  
5 Superfund site, or now a state lead site, I guess?

6 A. Citgo and Occidental Chemical, Glenn Springs  
7 Holdings.

8 THE REPORTER: Glenn Springs Facilities?

9 THE WITNESS: Glenn Springs Holdings.

10 A. I guess I should correct that. It's actually  
11 Citgo and Glenn Springs Holdings.

12 Q. Do these other Superfund sites, the Bayou  
13 d'Inde and Newtown Creek, do those also involve  
14 contaminated sediments?

15 A. Yes.

16 Q. Is that still an area that -- contaminated  
17 sediments still an area where you kind of focus your  
18 work while you --

19 A. It takes up more of my time than any of my  
20 other work, yeah. Yes.

21 Q. Now, I see that you have listed that you're  
22 that you're a California registered geologist --

23 A. Right.

24 Q. -- a Mississippi professional geologist, and a  
25 Texas professional geologist. Correct?

1           A.     That's correct.

2           Q.     And you also list California certified  
3 hydrogeologist?

4           A.     That's correct.

5           Q.     So do you have any other -- are you licensed  
6 in any other states or by any other boards, other than  
7 the ones you have listed here in 450?

8           A.     That's it.

9           Q.     Are you a professional engineer?

10          A.     No.

11          Q.     Now, in Texas is your license through the  
12 Texas Board of Professional Geoscientists?

13          A.     I think it's called Professional Board of  
14 Geologists, but yes. I'm not sure what the name is; but  
15 yes, that board.

16          Q.     And so there are -- for the Texas board as  
17 well as, I'm sure, the other board, there are certain  
18 rules of practice that are set down by that board?

19          A.     That's correct.

20          Q.     So in the work that you're doing at the San  
21 Jacinto River waste Pits, do you consider yourself doing  
22 work as a geoscientist or a professional geologist?

23          A.     Yes.

24          Q.     So the work that you're doing at -- let me ask  
25 you: The San Jacinto River waste Pits is kind of a

1 long --

2 A. Right, right.

3 Q. Do you mind if -- unless we're talking about  
4 some other site where I'll identify it, if I refer to it  
5 as "the site" for purposes of our discussion today, is  
6 that okay? Can we have an agreement that that's what  
7 we're talking about, is the San Jacinto River waste Pits  
8 Superfund site?

9 MR. STANFIELD: Assuming we're talking  
10 about the northern impoundment?

11 A. I will -- I will specifically ask you about  
12 the southern impoundments if I've got questions about  
13 the southern impoundments. Otherwise, if I ask you  
14 questions about the site, I'll be referring to the area  
15 of the northern impoundments, if that's okay.

16 MR. RILEY: I think the area of the site  
17 in the Superfund context is broad. So if you want to  
18 define it that way, I think --

19 MR. MUIR: Why don't we just define it as  
20 not including the northern impoundments.

21 A. The southern impoundment.

22 Q. Not including the impoundment south of I-10.  
23 Okay?

24 A. If it works for everyone else.

25 Q. So your work, then, at the site would be



1     governed by the rules of the Texas board that you're  
2     licensed by?

3                     MR. BALLARD:   Object to form.

4                     MR. WILKIN:   Objection.   Form.

5             Q.     And this raises another issue in the  
6     deposition.   From time to time, the attorneys may make  
7     objections.

8             A.     Yeah.

9             Q.     Go ahead and wait till they're finished.   And  
10    then, unless you're instructed not to answer by  
11    counsel --

12            A.     Yeah.

13            Q.     -- then go ahead and answer the question.  
14    Okay?

15            A.     Right.   Well, I mean, I think the question is  
16    sort of legal question so. . . I'm not an attorney, and  
17    it's probably not appropriate for me to answer the  
18    question as far as how exactly those rules may or may  
19    not apply to San Jacinto.

20            Q.     You're not an attorney, but you are a Texas  
21    professional geologist and have a license, license No.  
22    10840.   Correct?

23            A.     Right.

24            Q.     Have you reviewed the rules of the Texas  
25    licensing board that governs your profession in Texas?

1 MR. RILEY: Objection. Form.

2 A. I've read them. I haven't memorized them.

3 Q. Okay. But do you consider that the work you  
4 do in Texas is governed by and you're required to comply  
5 by those rules in Texas or be subject to sanction in  
6 Texas?

7 MR. RILEY: Objection. Form.

8 MR. WILKIN: Objection. Form.

9 A. Again, I'd refer you to the legal term for  
10 that question.

11 Q. I guess I'm asking you whether you feel that  
12 you are bound to abide by the rules set down by the  
13 licensing board in the State of Texas that you're  
14 licensed by when you're working in the State of Texas.

15 MR. WILKIN: Objection. Form.

16 A. Same answer really. I mean, that's a legal  
17 opinion. I don't have all of those rules and  
18 regulations in front of me. I could review those, and  
19 some of them probably apply, some of them may not apply.  
20 I'm not sure exactly what would apply to this particular  
21 site and what we've done here.

22 (Exhibit 451 marked.)

23 Q. Let me show you, then, what is marked as  
24 Exhibit No. 451. Do you recall having ever seen rules  
25 for a professional geoscience licensure in public

1 practice in the State of Texas?

2 A. Yes.

3 Q. This is -- it's actually a very long document,  
4 and the questions I had were specific to subchapter C of  
5 the code of professional conduct.

6 MR. STANFIELD: Counsel, I'm missing  
7 pages 1 through 35.

8 MR. MUIR: That's right. I'm explaining  
9 that, that I've included a portion of this in the  
10 exhibit.

11 MR. STANFIELD: And how many pages are  
12 missing from the packet that you have? because it ends  
13 at 45.

14 MR. MUIR: Yeah. I don't know. I don't  
15 have the entire thing.

16 Q. If you could turn to page 37 --

17 A. Okay.

18 Q. -- direct your attention to the paragraph i,  
19 lower case i, which says, "A Professional Geoscientist  
20 who is presenting geoscientific testimony, including  
21 geoscientific interpretation, analysis, or conclusions,  
22 or recommending geoscientific work before any public  
23 body or court of law, whether under sworn oath or not,  
24 must adhere to all provisions of the Act and the rules  
25 of the Board in the provision of all geoscientific

1 services rendered, regardless of whether the  
2 Professional Geoscientist is paid for the service or is  
3 providing such service on behalf of themselves or some  
4 other organization for which their services are provided  
5 at no cost."

6 A. Uh-huh.

7 Q. My question, then, sir, is: Do you believe  
8 that, in giving testimony here today, that it would fall  
9 under this provision of the rules of your profession?

10 MR. WILKIN: Objection. Form.

11 MR. BALLARD: I would also object, just  
12 for the record, that any questions asked about this --  
13 these rules that -- he's picked out four page -- or, I  
14 guess, eight pages of would be misleading without the  
15 rest of the rules. And it's our understanding this  
16 document is 65 pages long. So to be fair, he should  
17 have the whole document. So I'm just going to object  
18 generally to questions regarding this.

19 MR. RILEY: I've got an objection. There  
20 are likely also to be interpretations of these rules,  
21 which are not provided.

22 MR. MUIR: Are you finished with your  
23 speaking objections?

24 MR. RILEY: Yes, sir.

25 Q. You can answer the question now.

1 MR. WILKIN: Object to form.

2 A. So -- I'm sorry. What's the question, again,  
3 is?

4 Q. In giving testimony today about your work on  
5 the site, do you believe that that is controlled by the  
6 rules of the Texas licensing board for your profession?

7 MR. STANFIELD: Objection. Form.

8 MR. WILKIN: Objection. Form.

9 A. Again, that's a legal conclusion -- a legal  
10 question I'd rather not answer.

11 Q. Let me ask you, then, on page 38. Ask you to  
12 look at Section 851.103 that highlighted a portion  
13 understand A. Now, says, "A Professional Geoscientist  
14 or Geoscience Firm shall not practice geoscience in any  
15 manner which, when measured by generally accepted  
16 geoscience standards or procedures, is reasonably likely  
17 to result or does result in the endangerment of the  
18 safety, health, or welfare of the public. Such practice  
19 is deemed to be 'reckless.'"

20 Do you believe that in your work on the  
21 site that this provision of the rules of your profession  
22 would apply?

23 MR. WILKIN: Objection. Form.

24 A. Same -- same answer. It's a legal opinion.  
25 I'm not going to provide any legal opinions.

1           Q.    So do I understand that you then have no  
2   opinion as to whether or not your practice or the work  
3   that you're doing at the -- at the site should comply  
4   with a provision saying that you shouldn't practice in a  
5   manner which is reasonably likely to result or does  
6   result in the endangerment of safety, health, or welfare  
7   of the public?

8                   MR. BALLARD:  Objection.  Form.  
9   Mischaracterizes the testimony.

10          A.    Again, I think you're asking me for a legal  
11   opinion.  I think there are certainly codes of conduct  
12   that you would perform without this.  But if you're  
13   asking me for a legal opinion on exactly what applies to  
14   this -- in this document to this site, I'm not prepared  
15   to answer that because it's a legal question.

16          Q.    Sir, again, I don't think it is a legal  
17   conclusion.  This is provisions which govern your  
18   practice.  Do you -- do you apply the principle  
19   reflected in 851.103A in your practice?

20                   MR. WILKIN:  Object to the sidebar and  
21   object to form.

22          A.    I think I do apply it.  But again, that's a  
23   legal -- legal opinion as to exactly how these  
24   regulations or rules may apply to the San Jacinto site.

25          Q.    Let me direct your attention, then, to the

1 Section 851.104, ask you if you'd first read that.

2 A. The section A?

3 Q. Section A?

4 A. Yes. A professional geologist [sic], a  
5 geoscientist in training, or a geoscience firm shall not  
6 directly or indirectly perform an act, omit, or enact or  
7 allow an omission, make an assertion, or otherwise  
8 engage in practice in a practice in such a manner as to  
9 defraud, deceive, create a misleading interpretation.

10 Q. A misleading impression, I believe?

11 A. Impression, yes.

12 Q. Do you believe that the principle in Section  
13 851.104 A would apply to your work at the site?

14 MR. WILKIN: Objection. Form.

15 A. Again, it's a legal opinion, and I'm not going  
16 to answer it, you know, based on the exact application  
17 of this to the San Jacinto site in this case. It seems  
18 like that's how anyone should conduct themselves in any  
19 -- regardless of the rules.

20 MR. MUIR: I'll object to the  
21 responsiveness.

22 Q. Do you believe that your work at the San  
23 Jacinto site should comply with what you read in 851.104

24 A?

25 MR. WILKIN: Objection. Form.

1           A.    Again, it's a legal -- it's a legal  
2   interpretation.

3           Q.    Sir, I'm not asking you for a legal -- I asked  
4   you whether you believe, as a professional geologist,  
5   that your work at the San Jacinto site should comply  
6   with these principles.

7                   MR. WILKIN:  Object to the sidebar and  
8   objection to form.

9                   MR. BALLARD:  I'll also object, asked and  
10  answered.

11          Q.    You can answer the question, sir.

12          A.    I thought I'd answered it.

13          Q.    So do I understand your testimony to be, then,  
14   that you don't know or you don't believe that the  
15   principles in 851.104 would apply to your work at the  
16   San Jacinto site?

17                   MR. WILKIN:  Objection.  Form.

18          A.    I don't think that was what I said.  I think  
19   you're asking me for a legal opinion on some rules and  
20   regulations that are promulgated by the Texas Board of  
21   Professional Geologists.  And it's a legal question that  
22   requires a legal opinion, and I'm not a lawyer.  In  
23   general, I do have a registration and I'm held to these  
24   rules.

25          Q.    Do you consider that the work you are



1 performing at the site is the practice of geology?

2 A. Parts of it.

3 MR. BALLARD: Object to the form. I'm  
4 sorry. I didn't get a chance to say it.

5 THE WITNESS: Sorry.

6 Q. Tell me what work that you've done at the site  
7 that you would not consider practicing your profession  
8 as a professional licensed geologist.

9 MR. STANFIELD: Objection to form.

10 A. I guess, just to back up a little bit, you  
11 know, there's a lot of things that go into these types  
12 of investigations, RI/FS investigations. Some of it is  
13 geoscience related; some of it is not. And I guess we  
14 could go through all of the documents that have been  
15 produced and talk about what parts of those are  
16 geoscience related and which parts aren't. But  
17 certainly not all of it has been, and it's been a more  
18 collaborative effort between many team members and many  
19 disciplines.

20 Q. I appreciate there have been a number of  
21 different people working at the site, and we're going to  
22 talk in some more detail later about some of these  
23 people. I'm really looking for what you feel that you  
24 personally have done at the site. I assume that one of  
25 the reasons you are working at the site as the project

1 manager for MIMC and the project coordinator for the  
2 site is your professional experience. Is that -- do you  
3 believe that to be true?

4 A. Yes.

5 MR. WILKIN: Objection. Form.

6 Q. Okay. And certainly, then, some of the work  
7 that you personally have contributed at the site would  
8 be the practice of -- of your profession as a geologist?

9 MR. WILKIN: Objection. Form.

10 A. Yes.

11 Q. As a professional geologist in Texas, do you  
12 have a seal?

13 A. Yes.

14 Q. What is a seal used for as a professional  
15 geologist in Texas?

16 A. That's outlined in this document. I don't  
17 know if you have it, but I don't have that memorized. I  
18 would want to refer to cases where that is required.

19 Q. Well, what's your general understanding of  
20 what you use a seal for?

21 MR. WILKIN: Object to the form.

22 BALLARD: Form.

23 A. Again, I would want to refer to the rules for  
24 that to make sure that I state it correctly.

25 Q. Have you put your seal as a professional

1 geologist in Texas on any of the documents submitted to  
2 EPA in this case?

3 A. No.

4 Q. Have -- have there been any of the documents  
5 that have been submitted by Anchor in this case that  
6 have borne a seal from someone else, either a  
7 professional engineer or a professional geologist or  
8 some other environmental professional?

9 A. Yes.

10 Q. Can you tell me which of the documents  
11 submitted to EPA by Anchor have been sealed by someone  
12 in your work?

13 MR. BALLARD: Object to form.

14 A. I don't know the exact document, but the  
15 design documents for the armor cap would have been  
16 stamped.

17 Q. Do you recall who sealed those documents?

18 A. Yes.

19 Q. Who was it?

20 A. John Verduin.

21 Q. Who is John Verduin?

22 A. He's a partner within Anchor, an engineer,  
23 geotechnical engineer, primarily.

24 Q. Where does he practice? What office does he  
25 practice out of?

1 A. Seattle.

2 Q. Is he a professional engineer licensed in  
3 Texas, do you know?

4 A. Yes.

5 Q. What has Mr. Verduin's role been at the site?

6 A. Primarily, engineering support.

7 Q. And has he primarily worked on what's  
8 sometimes referred to as the Time Critical Removal  
9 Action cap?

10 A. He was involved in that and the feasible  
11 study.

12 Q. Let me ask you about some other people that  
13 I've seen names in various documents indicating they  
14 worked for Anchor. A John Laplante, L-A-P-L-A-N --

15 A. Laplante.

16 Q. I'm sorry?

17 A. Laplante, John Laplante.

18 Q. Laplante? Okay. Who is Mr. Laplante?

19 A. He's a senior associate within Anchor,  
20 engineer.

21 Q. Do you know whether he's licensed in Texas as  
22 an engineer?

23 A. No, he's not.

24 Q. Is he a licensed engineer somewhere?

25 A. Yes.

1 Q. Where is he licensed?

2 A. I don't know.

3 Q. And he works out of the Seattle office as  
4 well?

5 A. Yes.

6 Q. What has been Mr. Laplante's role at the site?

7 A. Same as Mr. Verduin.

8 Q. I saw a reference to Mr. Laplante's name as  
9 DQO planning. Does that sound familiar?

10 A. I know what a DQO stands for.

11 Q. Why don't you start by explaining to the jury  
12 what the DQO is.

13 A. Data quality objectives, I would imagine; but  
14 I'd have to see the documents to know the exact context  
15 that you're talking about.

16 Q. But is that a role that you understand that  
17 Mr. Laplante has played at this site?

18 MR. BALLARD: Object to form.

19 A. I would really need to go back and see the  
20 document that that reference was made to.

21 Q. Okay. What about QAPP, Q-A-P-P, Development?  
22 Can you tell the jury what QAPP generally stands for?

23 A. That's the quality assurance project plan.

24 Q. Okay. And do you recall whether Mr. Laplante  
25 had any -- did any work with the QAPP?

1           A.    We all had lots of involvement in lots of  
2 different documents and preparation of documents. I  
3 would expect John would have participated in that.

4           Q.    What about Matt Henderson. Is that also an  
5 Anchor employee that worked on the site?

6           A.    Yes.

7           Q.    What was Mr. Henderson's primary role, if you  
8 know?

9           A.    Engineering support.

10          Q.    Is he also a professional engineer?

11          A.    I'm not sure if he is or not. I would imagine  
12 he is, but I don't know for sure.

13          Q.    I take it then --

14                   MR. BALLARD: Object to responsiveness.  
15 Don't guess.

16          Q.    I take it, then, that you don't know whether  
17 or not he's licensed in Texas?

18          A.    Right.

19          Q.    Did his engineering support deal with any  
20 particular part of the project at the site?

21          A.    Primarily, the TCRA and the feasibility study.

22          Q.    I know it's been used a lot, but TCRA,  
23 T-C-R-A, is what that --

24          A.    Right.

25          Q.    Okay. And that's the Time Critical Removal

1 Action, is what that stands for?

2 A. That's right.

3 Q. It's easier to use. I just want to make sure  
4 that we'd explained for the jury what it is when they  
5 may hear us talking about a TCRA?

6 MR. BALLARD: We've been going for about  
7 an hour. Can we take a break?

8 MR. MUIR: Of course.

9 Q. Also, sir, if you need a break at any time, if  
10 you'd like to break, please let us know it's not an  
11 endurance contest. I forgot to inform you of that  
12 earlier.

13 THE VIDEOGRAPHER: We're off the record  
14 at 10:25.

15 (Break taken.)

16 THE VIDEOGRAPHER: We're back on the  
17 record at 10:44.

18 Q. Mr. Keith, before we broke, we were talking  
19 about some of the other Anchor employees that are  
20 working with you on the site. I want to go back to that  
21 and ask you about a few more that I've seen the names in  
22 some of the documents. David Templeton, can you tell me  
23 what his role was at the site?

24 A. David is a partner with Anchor that's  
25 responsible for our corporate health and safety program.

1 That's primarily his function at the site.

2 Q. And what office does he work out of?

3 A. Seattle.

4 Q. Is Seattle Anchor's primary office, would you  
5 say?

6 A. Yes.

7 Q. How large is the office -- the Anchor office  
8 that you work out of in Mississippi?

9 A. You mean number of employees?

10 Q. Yeah, start with that.

11 A. Right now we have five full-time employees.

12 Q. How many people does Anchor employ  
13 companywide?

14 A. Over 300.

15 Q. Jason Kase, who is he and who role did he play  
16 at the site?

17 A. Jason Kase is a biologist. He primarily  
18 supported some of the field investigations.

19 Q. Where does he work out of?

20 A. We just opened an office in Daphne, Alabama,  
21 that he's working out of now.

22 Q. Did he previously work out of your Pensacola  
23 office?

24 A. He was in Pensacola, yes.

25 Q. What about Wendell Mears?



1           A.     Wendell Mears is an engineer, senior  
2     associate.

3           Q.     What was his role at the site?

4           A.     He provided engineering support.

5           Q.     For any particular part of the work out there?

6           A.     Primarily, the TCRA and the feasibility study.

7           Q.     Do you know whether he is licensed in Texas?

8           A.     No.

9           Q.     No, he's not?

10          A.     No, he's not.

11          Q.     And what office does he work out of,  
12     Mr. Mears?

13          A.     He's also working out of the Daphne office  
14     now.

15          Q.     Are there any other Anchor employees that have  
16     played significant roles at the site?

17                     MR. STANFIELD:  Objection.  Form.

18                     MR. WILKIN:  Objection.  Form.

19          A.     I guess I would have to understand, What do  
20     you mean by significant roles?

21          Q.     Well, are there any other Anchor employees,  
22     other than the ones that we've talked about, that have  
23     worked with -- with you on the San Jacinto site?

24          A.     There's, yes, many more.

25          Q.     Okay.  About how many, do you think?

1           A.     It would be a guess. I would have to go back  
2 and look at our records.

3           Q.     What records would you have to review to  
4 answer that question?

5           A.     Time sheets, invoices.

6           Q.     It's probably an obvious question, but Anchor  
7 is being paid for the work that they're doing out at the  
8 site. Correct?

9           A.     That's correct.

10          Q.     And you mentioned time sheets and invoices.  
11 Can you explain the method of billing that you use for  
12 the site?

13          A.     Monthly.

14          Q.     What documentation do you provide -- I take it  
15 if you've got time sheets, are things done on an hourly  
16 basis or is it by job or how is that billed?

17          A.     Time and materials.

18          Q.     How much has Anchor billed to date out on the  
19 San Jacinto site?

20          A.     I have no idea.

21                   MR. STANFIELD: Objection. Form.

22                   MR. WILKIN: Form.

23          Q.     Let me show you what's marked as Exhibit 452.

24                   (Exhibit 452 marked.)

25          Q.     It's an amended notice of deposition for your

1 deposition today. Do you recall whether you've ever  
2 seen the notice?

3 A. I don't recall.

4 Q. Okay. The last page, Exhibit A, on page 7 of  
5 Exhibit 452, it asks that you bring any and all  
6 documents that you, as a witness, have reviewed in  
7 preparation for the deposition. Let me ask you first:  
8 Did you review any documents in preparation for your  
9 deposition today?

10 MR. BALLARD: Object to the form.

11 A. Not specifically.

12 Q. Did you review documents generally, then?

13 MR. BALLARD: Object to the form.

14 MR. WILKIN: Object to the form.

15 A. Only as a matter of course of doing project  
16 work.

17 Q. Have you met and talked with anyone in  
18 preparation for your deposition today?

19 A. I met with counsel.

20 Q. Counsel for who?

21 A. The counsel represented here.

22 Q. Counsel for Waste Management?

23 A. Yes.

24 Q. Counsel for International Paper?

25 A. Yes.

1 Q. Counsel for MIMC?

2 A. Yes.

3 Q. Did you speak with anyone else at Anchor that  
4 you've worked with on this in preparation for your  
5 deposition?

6 A. No.

7 Q. What about anyone from Integral?

8 A. No.

9 Q. Did you meet with any -- well, let me ask you:  
10 When you met with counsel, was there anyone else  
11 present, other than you and counsel?

12 A. Not that I know of.

13 Q. Are you being represented by counsel here  
14 today in your deposition?

15 A. No.

16 Q. What was the subject of the discussions you  
17 had with counsel?

18 MR. WILKIN: I'll instruct the witness  
19 not to answer that.

20 MR. MUIR: Are you asserting privilege?

21 MR. WILKIN: Yeah.

22 MR. MUIR: What privilege?

23 MR. WILKIN: Well, work product  
24 privilege, among others.

25 MR. STANFIELD: I'm also asserting a

1 consulting expert privilege on behalf of International  
2 Paper, and also instruct the witness not to answer.

3 Q. Counsel has instructed that you not answer the  
4 question. Are you going to heed to their instruction  
5 and not answer the question?

6 A. Yes.

7 Q. In the future in this deposition, if you're  
8 instructed not to answer a question by any of the  
9 counsel for Waste Management or MIMC or International  
10 Paper, will you similarly not answer those questions?

11 MR. BALLARD: Objection to the form.

12 A. Yes.

13 Q. Simple reason that I ask is so I won't have to  
14 ask you each time are you going to answer or are you  
15 going to heed to counsel's instruction. So if you're  
16 telling me that you will take instruction not to answer,  
17 then we can avoid that additional -- those additional  
18 questions.

19 A. Okay.

20 MR. BALLARD: Objection. Form.

21 A. Okay.

22 Q. We talked some about some of the other  
23 Superfund sites that you've worked on, some of the  
24 primary chemicals of concern. Let me ask you whether  
25 you have -- well, first, I've seen reference in a lot of

1 the documents to dioxins and dibenzofurans as being  
2 primary chemicals of concern at the San Jacinto site.  
3 Is that accurate, in your mind? Are those primary  
4 chemicals of concern?

5 MR. WILKIN: Object to form.

6 MR. BALLARD: Object to the form.

7 A. Chemicals of concern are a sort of regulatory  
8 term used within Superfund. Dioxins are important at  
9 the Superfund site, at the San Jacinto site.

10 Q. When you say they're important, are they --  
11 within the regulatory meaning at the Superfund site, are  
12 they a chemical of concern?

13 MR. WILKIN: Objection. Form.

14 MR. BALLARD: Form.

15 A. That's a term that's defined under CERCLA. I  
16 guess we could go back to those regulations and look up  
17 what the definition of it is.

18 Q. So how would you characterize at the San  
19 Jacinto site the contaminants that are -- that you are  
20 most concerned with, as the project manager and project  
21 coordinator?

22 MR. WILKIN: Objection form.

23 A. The contaminants that we've addressed,  
24 primarily, are dioxins and furans.

25 Q. I'm sorry. Dioxins and?

1 A. And furans.

2 Q. And furans. Okay. Using that, dioxins and  
3 furans, as the chemicals that you've addressed primarily  
4 at the site, are there other Superfund or nonSuperfund  
5 sites that you've been -- had significant work on in  
6 your professional career where dioxins and/or furans  
7 played a similar role in those sites that they do in the  
8 San Jacinto site?

9 MR. BALLARD: Object to form.

10 MR. WILKIN: Object to the form.

11 A. What do you mean by similar role?

12 Q. That they were the primary chemicals that you  
13 were addressing at the site.

14 A. Not primary.

15 Q. Okay. Have dioxins and furans been chemicals  
16 that you've had to address at other sites in a lesser --  
17 as a lesser role?

18 A. Yes.

19 Q. Where -- which of the sites would you say that  
20 applies to?

21 MR. BALLARD: Object to form.

22 A. Bayou d'Inde, Patrick Bayou.

23 Q. Any others that you can recall?

24 A. No.

25 Q. Is it your understanding that the waste at the

1 San Jacinto site was the result of manufacture of paper  
2 or paper products?

3 MR. BALLARD: Object to the form.

4 A. When you say the waste at the San Jacinto  
5 site, what are you specifically talking about?

6 Q. Well, there is -- there are multiple  
7 impoundments at the site -- correct? -- into which waste  
8 was placed at some point?

9 MR. WILKIN: Objection. Form.

10 MR. STANFIELD: Objection. Form.

11 A. Is that your understanding?

12 MR. WILKIN: Objection. Form.

13 A. I don't know about the multiple. There are  
14 impoundments that waste was placed in.

15 Q. What's your understanding as to where that  
16 waste came from?

17 A. Paper mill.

18 Q. Okay. Have you worked on other sites where  
19 you were dealing with paper mill waste?

20 A. Yes.

21 Q. What were the names of those sites?

22 A. The Fox River.

23 Q. Where is Fox River?

24 A. Wisconsin.

25 Q. What type of site was Fox River, Wisconsin?



1 A. What type of site?

2 Q. Yes.

3 A. It's a Superfund site.

4 Q. What's your role at the Fox River site?

5 A. It was pretty limited. I just provided some  
6 geochemical support.

7 Q. Was that while working at Anchor?

8 A. Yes.

9 Q. Who was Anchor's client at that site?

10 A. I honestly don't remember. I wasn't the  
11 project manager.

12 Q. Do you know if it was International Paper or  
13 Champion Paper?

14 A. No.

15 Q. Do you know it was neither of those?

16 A. It was not them.

17 Q. What was the nature of the remedy at the Fox  
18 River site?

19 A. It was -- or is a combined remedy.

20 Q. Combination of what?

21 A. Capping, dredging, natural recovery, some  
22 in-situ treatment.

23 Q. So when you say in-situ treatment, you mean  
24 treatment of waste on site?

25 A. I'm not that familiar with what they did

1 exactly.

2 Q. Okay. Generally, if you're talking about  
3 in-situ treatment, are you talking about treating the  
4 waste at that location, as opposed to hauling it out and  
5 treating it someplace else?

6 A. Yes.

7 Q. When you say dredging was a part of the Fox  
8 River remedy, can you explain more what was being  
9 dredged there?

10 A. Like I said, I had a very limited role in that  
11 project. And as far as the remedial design and  
12 implementation, I had almost no role.

13 Q. Do you know whether they were dredging to  
14 remove contaminated sediments at Fox River?

15 MR. BALLARD: Object to the form.

16 A. Again, I don't know the specifics, and I'd  
17 really hate to speculate on what they did and what they  
18 removed.

19 Q. Okay. Has Anchor -- prior to the San Jacinto  
20 site, has Anchor done work for Waste Management?

21 A. No.

22 MR. RILEY: Objection. Form. I'm sorry.

23 Q. Have you, in your professional career, done  
24 any work for Waste Management prior to the San Jacinto  
25 site?

1 MR. RILEY: Objection. Form.

2 A. Yeah, I don't work for Waste Management. I  
3 work for McGinnes Industrial Maintenance Corporation.

4 Q. I understand that that is your answer. My  
5 question really wasn't that. I'm asking whether prior  
6 to -- let me ask you: When did Anchor first start doing  
7 any work related to the San Jacinto site?

8 A. When?

9 Q. Yes, sir.

10 A. About 2008.

11 Q. So then prior to 2008, had Anchor done any  
12 work for Waste Management?

13 A. No.

14 Q. Had you, in your professional career, done any  
15 work for Waste Management?

16 A. No.

17 Q. Had Anchor done any work for McGinnes  
18 Industrial, or MIMC?

19 A. No.

20 Q. Had Anchor done any work prior to 2008 for  
21 International Paper?

22 A. No.

23 Q. Had you, in your professional career, done any  
24 work for International Paper or MIMC before 2008?

25 A. No.

1 Q. Since 2008, has Anchor done any work for Waste  
2 Management?

3 A. No.

4 Q. Other than the San Jacinto site, has Anchor  
5 done any work for International Paper since 2008?

6 A. I'm not sure.

7 Q. Nothing that you've worked on?

8 A. Nothing that I've worked on.

9 Q. What about MIMC since 2008? Has Anchor done  
10 any work for MIMC, other than the San Jacinto site?

11 A. Yes.

12 Q. What other work has Anchor done for MIMC since  
13 2008?

14 MR. WILKIN: We're not talking about  
15 other sites.

16 MR. BALLARD: I think that's right. I  
17 think the judge has indicated that other sites are not  
18 part of the discovery in this case. So --

19 MR. MUIR: Well, I'm entitled to ask this  
20 witness the question. You're not going to instruct this  
21 witness not to answer a question about whether his  
22 company has done other work for MIMC. There's no basis  
23 for that.

24 MR. WILKIN: Well, he's answered that.

25 MR. BALLARD: He's already answered that.

1                   MR. MUIR: And I'm entitled to find out  
2 what it is.

3                   MR. WILKIN: No, you're not.

4                   MR. RILEY: No.

5           A.     It's actually privileged.

6           Q.     Has Anchor done any work related to a  
7 Superfund site or a state site in Hitchcock, Texas?

8                   MR. BALLARD: Again, object to the form.

9                   MR. WILKIN: These are other -- this is  
10 another site, so we're going to instruct the witness not  
11 to answer.

12           Q.     Okay. Do you recall when in 2008 that Anchor  
13 was first engaged to do any work related to the San  
14 Jacinto site?

15           A.     Not specifically, no.

16           Q.     Do you recall when you first became involved  
17 as an Anchor employee working on the San Jacinto site?

18           A.     Not -- not specifically.

19           Q.     Do you know who, within Anchor, first began  
20 working on the San Jacinto site? Was that you or  
21 someone else?

22           A.     It was me.

23           Q.     So you've been involved for Anchor since the  
24 beginning of the engagement on the San Jacinto site?

25           A.     That's correct.

1 Q. You just don't recall specifically when it  
2 was?

3 A. That's correct.

4 Q. If -- does September 2008 sound like that  
5 could be it? Was it the latter part of the year?

6 MR. BALLARD: Object to form.

7 A. I don't remember.

8 Q. Just don't remember. Okay. In 2008, then,  
9 when Anchor was hired, who hired Anchor to do work?

10 A. McGinnes Industrial Maintenance Corporation.

11 Q. There is a lot of times I've seen M-I-M-C, or  
12 MIMC?

13 A. Uh-huh.

14 Q. If we talk about MIMC, you understand that's  
15 the company, McGinnes Industrial, that Anchor was hired  
16 by?

17 A. That's correct.

18 Q. Okay. Does MIMC have a written agreement with  
19 Anchor for their work on this -- this site, one or more?

20 A. We have an agreement with MIMC, yes.

21 Q. Okay. My question is: Is it in writing?

22 A. Yes.

23 Q. Do you know who executed that contract on  
24 behalf of MIMC?

25 A. I don't remember.

1 Q. Do you recall who first approached you or  
2 Anchor, the individual for MIMC, that approached you?

3 A. Yes.

4 Q. Who was that?

5 A. March Smith.

6 Q. What's your understanding of March Smith's  
7 position for MIMC?

8 A. He's retired now.

9 Q. What was it in 2008?

10 A. I don't know what his exact position was. He  
11 was managing this project.

12 Q. Okay. Who else do you deal with from MIMC for  
13 interaction on the San Jacinto site?

14 A. Currently?

15 Q. Yes, sir.

16 A. Primarily, Dave Moreira.

17 Q. Do you know what his position is with MIMC?

18 A. I don't know what his title is.

19 Q. Do you know where he works out of?

20 A. New Hampshire.

21 Q. Do you know if Dave Moreira is an employee of  
22 MIMC?

23 A. I don't know.

24 Q. Do you know if Dave Moreira is an employee of  
25 Waste Management?

1 A. I don't know.

2 Q. Other than March Smith and Dave Moreira, have  
3 you had dealings with anyone else on behalf of MIMC in  
4 -- on this San Jacinto site?

5 A. Yes.

6 Q. Can you name those people?

7 A. Drew Shafer.

8 Q. Do you know his position at MIMC?

9 A. No.

10 Q. Do you know if Drew Shafer is a employee of  
11 Waste Management?

12 A. No.

13 Q. Is that -- is his first name Andrew?

14 A. I believe so, yes.

15 Q. Anyone else you've dealt with at MIMC on the  
16 San Jacinto site?

17 A. Francis Chin.

18 Q. Do you know if Mr. Chin is a employee of MIMC?

19 A. I don't know their employment status.

20 Q. Okay. Anyone else you've dealt with for Waste  
21 Management --

22 MR. BALLARD: Object to the form.

23 Q. -- for MIMC?

24 A. Not that I can remember.

25 Q. Now, can you tell me what you were initially



1 asked to do with regard to the San Jacinto site when  
2 Anchor was hired?

3 MR. WILKIN: We're going to instruct the  
4 witness not to answer that. It's within the consulting  
5 expert privilege.

6 Q. Were you -- let me ask you: When Anchor was  
7 first hired, who else was involved, other than yourself,  
8 on behalf of Anchor?

9 A. Kirk Zeigler and -- probably just me and Kirk.

10 Q. What was Mr. Zeigler's role?

11 A. He's an engineer that has a background in  
12 river hydrology.

13 Q. Is he licensed in Texas?

14 A. I don't know what his licenses are.

15 Q. What office does he work out of for Anchor?

16 A. Montvale, New Jersey.

17 Q. Were you or anyone else at Anchor involved in  
18 preparation for a meeting with the EPA in 2008 related  
19 to the San Jacinto site?

20 A. I'm really not very good at dates, so I  
21 couldn't say the exact date. We did have meetings with  
22 EPA early in the morning project.

23 Q. Who for Anchor attended those meetings?

24 A. I would have to go back to some type of  
25 sign-in sheet to know exactly. I know I was at some of

1     them.

2           Q.     And just sitting here today, you can't recall  
3     whether you or someone else at Anchor was involved in an  
4     October 2008 meeting with EPA on this site?

5           A.     That's -- yeah.

6           Q.     Okay. Do you recall whether you or other  
7     employees of Anchor were involved in preparation for a  
8     meeting with EPA that occurred in August 2009 after MIMC  
9     received the special notice letter from the EPA?

10          A.     Again, I'm not real good at dates and  
11     remembering exactly who was in meetings. I remember we  
12     attended a meeting like you described -- or I attended a  
13     meeting like you described.

14          Q.     Do you recall seeing a special notice letter  
15     that was sent by EPA to MIMC related to this site?

16                   MR. BALLARD: Object to the form.

17          A.     Not specifically.

18          Q.     But you recall there was a meeting that you  
19     attended with EPA related to the special notice letter?

20          A.     I don't know if it was related to the special  
21     notice letter. I remember there was a meeting when we  
22     were talking about doing an RI/FS in a Nontime Critical  
23     Removal Action.

24          Q.     And you participated in those -- that meeting  
25     with EPA on behalf of MIMC. Is that correct?

1 A. It was -- MIMC was certainly there.

2 Q. Well, who was Anchor --

3 A. Yes.

4 Q. Who was Anchor working for at that time?

5 MIMC?

6 A. We were working for MIMC. I don't remember if  
7 we were working for International Paper at that point or  
8 not.

9 Q. Did you consider your role or Anchor's role at  
10 those meetings to be advocating for MIMC and their  
11 position at the site?

12 MR. BALLARD: Object to the form.

13 MR. WILKIN: Objection to form.

14 A. No.

15 Q. What did you consider your role to be?

16 A. To provide a nonbiased evaluation of what we  
17 knew about the site and what we thought was the best  
18 path forward.

19 Q. At some point was Anchor also hired by  
20 International Paper to work on the San Jacinto site?

21 A. Yes.

22 Q. Do you recall approximately when that was,  
23 either by date or where in the process you were when  
24 International Paper also hired you?

25 A. It was about the time that we were meeting

1 with EPA to discuss the RI/FS.

2 Q. So today who is Anchor working for at the San  
3 Jacinto site?

4 A. IP and MIMC.

5 Q. Now, as I understand, you are the project  
6 manager for the San Jacinto site on behalf of MIMC. Is  
7 that correct?

8 MR. STANFIELD: Objection. Form.

9 A. I'm the project coordinator for MIMC and IP.

10 Q. Okay. Are you -- do you also serve as the  
11 project manager for MIMC?

12 MR. BALLARD: Object to the form.

13 MR. WILKIN: Objection. Form.

14 A. I don't understand the question, I guess.

15 Q. Okay. I've just seen references, for  
16 instance, to IP having a project manager, Ms. Sampson I  
17 believe?

18 MR. STANFIELD: Objection. Form.

19 A. Ms. Sampson works on the project. I didn't  
20 know there were different titles. We work  
21 collaboratively for MIMC and IP.

22 Q. Okay. So that's -- you don't consider her or  
23 haven't considered her as having a specific role as  
24 project manager for IP at the site?

25 A. No.

1 Q. Okay. Now, Ms. Sampson works for a company  
2 called Integral. Is that correct?

3 A. That's correct.

4 Q. Can you explain to us kind of what the  
5 breakdown between responsibilities between Anchor and  
6 Integral are at the site?

7 A. It's a very collaborative process. We worked  
8 together, basically, throughout the entire remedial  
9 investigation and feasibility study. And they have, I  
10 would say, worked on more the risk assessment issues  
11 maybe than we have. And we've worked more on the  
12 engineering issues, if you were going to break it up  
13 very broadly.

14 Q. Do you know if -- prior to the time when IP  
15 hired Anchor, were they already working with Integral at  
16 the site?

17 MR. STANFIELD: Objection to form.

18 A. I don't know.

19 Q. Was there particular expertise that Integral  
20 had that Anchor didn't have that they brought to the  
21 site?

22 A. That's hard to say. We manage sites and they  
23 manage sites. It's hard to say.

24 Q. Do you know why both companies were -- were  
25 hired to work on the site together?

1 A. No.

2 MR. STANFIELD: Objection. Form.

3 Q. Do you know if Integral was -- has been  
4 employed by both IP and MIMC at the site?

5 A. I don't know their contractual relationship.

6 Q. Now, the designation as project coordinator at  
7 the site, that's -- that's your role. Correct?

8 A. That's what's in the -- yes.

9 Q. And that's a -- that's a specific role at a  
10 Superfund site, the project coordinator. Correct?

11 A. It's a defined term in the UAO, the order.

12 Q. Okay. By the UAO, can you explain to the jury  
13 what that -- what that stands for?

14 A. It's an agreement between IP and MIMC and EPA  
15 to conduct a remedial investigation and feasible study.

16 Q. Well, UAO was actually a unilateral  
17 administrative order. Correct?

18 MR. BALLARD: Objection. Form.

19 Q. That's what UAO stands for?

20 A. That's what the acronym is, yes.

21 Q. Okay. And the EPA issued a unilateral  
22 administrative order in this case to International Paper  
23 and MIMC. Correct?

24 MR. BALLARD: Object to the form.

25 A. Yes.

1 Q. And you've seen that -- that document.

2 Correct?

3 A. Yes.

4 Q. So in your role as project coordinator, are  
5 you kind of the primary contact with the EPA on behalf  
6 of International Paper and MIMC?

7 A. I'm the primary contact between the remedial  
8 project manager at EPA.

9 Q. Who's the EPA remedial project manager?

10 A. Gary Miller.

11 Q. And can you explain for the jury what the  
12 remedial project manager for EPA -- what their role is  
13 at a Superfund site like this?

14 MR. BALLARD: Object to the form.

15 A. Yeah, I don't know what the definition would  
16 be as far as EPA's internal descriptions of their  
17 different positions may be. Basically, he helps  
18 coordinate completing the scope of work.

19 Q. Is your contact with him on technical issues?  
20 Do you confer with him on behalf of the EPA on technical  
21 issues at the site?

22 A. Yes.

23 Q. Has Mr. Miller been the remedial project  
24 manager for EPA for the entire time at this site?

25 A. No.

1 Q. Who was the remedial project manager for EPA  
2 prior to Mr. Miller?

3 A. Steve Tzhone.

4 Q. Can you spell his last name?

5 A. No.

6 Q. It's not Z-O-N-E. It starts with a T or --

7 A. No, it's not. It starts with a T. I don't  
8 remember exactly how to spell it.

9 Q. But it's pronounced Tzhone?

10 A. Correct.

11 Q. As the -- as the project coordinator for the  
12 PRPs -- you're familiar with the phrase PRP in  
13 association with Superfund sites?

14 A. Yes.

15 Q. Potentially responsible parties?

16 A. Yes.

17 Q. Okay. Are MIMC and IP, or International  
18 Paper, designated as PRPs at the San Jacinto site?

19 MR. BALLARD: Object to the form.

20 A. Yeah, that's a legal opinion, I think.

21 Q. You don't know whether they've been designated  
22 by the EPA as PRPs?

23 A. We could pull out the order, or whatever, I  
24 guess, and look.

25 Q. So as the project coordinator for



1 International Paper and MIMC at the San Jacinto site,  
2 does that mean that reports that are provided to EPA --  
3 that you're kind of the last word on what goes into  
4 those reports?

5 MR. WILKIN: Objection. Form.

6 A. Repeat the question.

7 Q. Sure. As the project coordinator for the  
8 PRPs, does -- do you have kind of final say, on behalf  
9 of the PRPs, as to what goes into the reports that  
10 are -- that are turned in to the EPA?

11 MR. WILKIN: Objection. Form.

12 A. Yeah. Again, it's a very collaborative  
13 process. I would say it's the Anchor team, the Integral  
14 team, the MIMC and IP team and EPA and TCEQ and others  
15 participate in preparation of these reports. So I don't  
16 think anyone necessarily has the final say.

17 Q. Within Anchor, for instance, would you be the  
18 person that has the final say as to what's contributed  
19 by Anchor to a report that goes to EPA?

20 MR. WILKIN: Objection. Form.

21 A. Yeah. Again, it's a collaborative process  
22 within Anchor, outside of Anchor working with everyone.  
23 And I don't -- I'm the person that may transmit the  
24 reports, but I would not say I have any kind of final  
25 authority on the reports.

1           Q.    Is there -- is there anyone within -- within  
2 your organization that, if there's a disagreement about  
3 what should be put into a report, kind of has the final  
4 say of veto power, or anything like that, at the site?

5                   MR. WILKIN:   Form.

6           A.    Again, it's a collaborative process.  We may  
7 have disagreements, but there's no final arbitrator.

8           Q.    Okay.  Let's talk about kind of your -- this  
9 collaborative process that you mentioned.  The Superfund  
10 site, the San Jacinto site, has involved a whole number  
11 of different reports and studies that have been  
12 submitted to EPA by Anchor and Integral.  Correct?

13          A.    That's correct.

14          Q.    And with regard to -- well, is there one --  
15 one of the companies or one of the people within Anchor  
16 or Integral who does, for instance, the first draft of a  
17 report that's going in, or does that vary by report?

18          A.    Again, it's a very, very collaborative  
19 process; and I would not say anyone has -- any one  
20 person has responsibility for drafting any complete  
21 report.  It's very much of a team effort.

22          Q.    Okay.  If you've got a report that is going to  
23 be submitted to the EPA, someone or someones put  
24 together a first draft of the report, I assume?

25          A.    A group of people would, yes.

1           Q.    Okay.  And once you get that group of people  
2   that have put together a first draft, how is that  
3   circulated for comments to others?

4                   MR. WILKIN:  I'm going to instruct the  
5   witness not to answer to the extent it involves  
6   communications with MIMC.

7                   MR. BALLARD:  Or lawyers or other  
8   consultants.  I mean, we're asserting all those  
9   privileges.

10                  MR. MUIR:  Just so I can be sure where --  
11   I've got a couple of follow-up questions, then, to be  
12   sure exactly what you're instructing him not to answer.

13           Q.    After a draft -- first draft is created, is  
14   that draft then circulated to other people at Anchor to  
15   -- to review and make comment on?

16           A.    Yes.

17           Q.    Is it circulated to people at Integral to  
18   review and make comment on?

19           A.    In some cases.

20           Q.    Are reports submitted to people within MIMC  
21   and IP for review and comment?

22           A.    Yes.

23           Q.    Are reports submitted to counsel for MIMC and  
24   IP to review and comment on?

25           A.    Yes.

1           Q.    And is there someone in particular within  
2 Anchor or Integral that circulates those documents for  
3 comment?

4           A.    It really varies by document.  Now, I have no  
5 idea what Integral does internally; but for us, it  
6 varies internally.

7           Q.    Okay.  But -- but the documents are -- I've  
8 seen a number of documents that have both the Anchor and  
9 Integral name on them?

10          A.    That's correct.

11          Q.    If there -- if something is submitted to EPA  
12 with the names of both of those companies on it, is it  
13 safe to assume that Integral has gotten to see that  
14 before it's submitted?

15          A.    Yes.

16          Q.    That it circulated to them?

17          A.    Yes.

18          Q.    Okay.  And these -- the reports that are  
19 submitted are submitted by your companies, these  
20 consulting companies, on behalf of MIMC and  
21 International Paper.  Correct?

22                   MR. BALLARD:  Object to the form.

23          A.    They're submitted in response to the  
24 unilateral order.

25          Q.    Well, the companies that are subject to the

1 unilateral order -- and there also was an agreed order  
2 related to the TCRA, the Time Critical Removal Action.  
3 Correct?

4 A. Yes.

5 Q. Okay. The companies that are -- that are  
6 subject to or parties to those agreements are MIMC and  
7 International Paper. Correct?

8 A. Yes.

9 Q. Okay. So to the extent something is being  
10 submitted to EPA, you're doing that on behalf of the  
11 people that -- that employ you to create those reports?

12 MR. BALLARD: Object to the form.

13 Q. Correct?

14 MR. WILKIN: Object to the form.

15 A. We submit those reports on behalf of our  
16 clients and to fulfill the requirements of the statement  
17 of work.

18 Q. Okay. Well, let me show you just -- this is  
19 all I'm talking about here. This is the document called  
20 Final Removal Action Work Plan. It was previously  
21 Exhibit 4 to the Slowiak deposition. It says prepared  
22 for U.S. Environmental Protection Agency, Region 6, on  
23 behalf of McGinnes Industrial Maintenance Corporation  
24 and International Paper Company. Correct?

25 A. Right.

1           Q.    This particular one says it was prepared by  
2 Anchor QEA. That's your company, Anchor?

3           A.    That's right.

4           Q.    Now, before submitting documents on behalf  
5 of -- these reports we're taking about on behalf of MIMC  
6 and International Paper, do you circulate and receive  
7 comments back from all the various groups that we've  
8 just talked about -- Integral, Waste -- or MIMC,  
9 International Paper, and counsel for those parties?  
10 Correct?

11                   MR. BALLARD: Object to the form.

12                   MR. STANFIELD: Objection. Form.

13                   MR. WILKIN: Form.

14           A.    We -- we get comments from a variety of people  
15 and incorporate those comments as best we can.

16           Q.    When you get comments back on reports that are  
17 later submitted to the EPA, do you retain those  
18 comments? Do you have, either electronically or in  
19 paper form somewhere -- for instance, to the extent that  
20 you received comments back from any of those parties on  
21 this Final Removal Action Work Plan, would you have  
22 retained those comments somewhere?

23                   MR. RILEY: Objection to form.

24           A.    Possibly.

25           Q.    Within your company or within your work

1 personally, do you have a procedure or a policy with  
2 regard to retaining comments that you receive, drafts of  
3 work that is done?

4 A. Do we have a procedure or a policy? No.

5 Q. Okay. Do you personally have some procedure  
6 that you follow with regard to keeping comments? For  
7 instance, we talked to other people that have said once  
8 a document is finalized, you know, I throw away all the  
9 drafts and comments. Do you have a similar type  
10 procedure that you use?

11 MR. BALLARD: Objection to form.

12 MR. WILKIN: Objection. Form.

13 A. I would say that I don't have a strict  
14 procedure that I use. Generally, you know, I'm working  
15 towards a final document.

16 Q. Okay. Was there any particular procedure that  
17 you followed in the San Jacinto case, as far as  
18 retaining drafts or comments that were received?

19 A. Not in particular.

20 Q. Have you been instructed by anyone in this  
21 case not to retain drafts or comments that you've  
22 received?

23 MR. WILKIN: I'll instruct the witness  
24 not to answer that question.

25 Q. Is there any way that -- and again, let's just

1 use the Final Removal Action Work Plan. Is there a way  
2 for you, if we sat down and went through that document,  
3 to tell me who contributed which parts of any particular  
4 report that were submitted in this collaborative effort?

5 MR. WILKIN: Objection. Form.

6 A. No.

7 Q. And whatever drafts or comments or things that  
8 you have retained, to the extent you have, do you  
9 believe that those would allow you to go back and kind  
10 of re-create who contributed what parts to any given  
11 report?

12 MR. RILEY: Object to form.

13 A. No.

14 Q. To the extent that you received comments on  
15 reports that were going to the EPA from people outside  
16 of your company, outside of Anchor, did you do anything  
17 to look into those people's credentials or expertise in  
18 providing those comments?

19 A. No.

20 MR. WILKIN: I'm going to instruct the  
21 witness not to answer that.

22 THE WITNESS: Sorry.

23 MR. WILKIN: Give me a second in between  
24 the questions, if you can.

25 Q. Are you familiar with the people at Integral



1 that have provided input into the documents submitted to  
2 EPA, on a professional basis?

3 A. I'm familiar with them.

4 Q. Who have you personally dealt with on the site  
5 at Integral?

6 A. Primarily, Jennifer Sampson.

7 Q. If there was disagreement with regard to what  
8 was to be included in a report between yourself or  
9 someone else at Anchor and Ms. Sampson, how were those  
10 resolved?

11 MR. RILEY: Objection. Form.

12 MR. STANFIELD: Objection. Form.

13 MR. WILKIN: I'll instruct you not to  
14 answer. I asserted him not to answer.

15 MR. MUIR: Okay.

16 Q. In looking up some information on the  
17 Internet, I ran across I guess an ad for a seminar in  
18 2009 that you did with a company called Project  
19 Navigator --

20 A. Uh-huh.

21 Q. -- I believe was here in Houston. Do you  
22 recall that?

23 A. I recall doing a couple of seminars with them.

24 Q. And in the -- in the bio for you, it indicated  
25 that -- that you had taken expertise in evaluating the

1 geochemical characteristics of metals, including  
2 mercury, in acquiesce environments.

3 We talked a little about one of your prior  
4 sites, I believe Lavaca Bay, for mercury was of  
5 particular concern? Was that the site where --

6 A. Yes.

7 Q. Okay. Do you -- do you consider yourself an  
8 expert in metals in acquiesce environment, specifically  
9 mercury?

10 A. I've done a lot of research in those things.  
11 I don't know what your definition of an expert is, I  
12 guess.

13 Q. That's fair enough. Let me ask: Have you  
14 ever been designated to testify in a court as an expert  
15 witness?

16 A. For mercury?

17 Q. For anything?

18 A. Yes.

19 Q. And what were you designated as an expert to  
20 testify about?

21 A. It was a project that involved a natural  
22 gas/water separation station and looking at potential  
23 contamination to the environment surrounding that  
24 facility.

25 THE VIDEOGRAPHER: I've got about five

1 minutes left on this tape.

2 Q. I probably just have a couple more minutes on  
3 this anyway, and we can break.

4 Any other situations where you've been  
5 designated to testify in a court as an expert witness?

6 A. No.

7 Q. Do you consider yourself an expert in dioxin  
8 or the fate and transport of dioxin in the environment?

9 MR. BALLARD: Objection. Form.

10 A. Again, I've done a lot of research and have a  
11 lot of experience in it. I'm not sure what you define  
12 as an expert.

13 Q. But you've never been designated as an expert  
14 in court?

15 A. That's correct.

16 Q. What about in any administrative proceeding?  
17 Have you been designated as an expert in dioxins in any  
18 administrative proceeding?

19 A. No.

20 MR. MUIR: Okay. Why don't we go off,  
21 then.

22 THE VIDEOGRAPHER: Off the record at  
23 11:45.

24 (Break taken.)

25 THE VIDEOGRAPHER: Begins disk two.

1 We're back on the record at 12:49.

2 Q. Mr. Keith, I want to show you now what was  
3 marked in a previous deposition as Exhibit 119. It is  
4 the unilateral administrative order that we were  
5 discussing some earlier. And I believe you said you  
6 have seen this before?

7 A. Yes.

8 Q. Did you assist in preparing any kind of  
9 response to this order to the EPA?

10 MR. WILKIN: Objection. Form.

11 A. Not that I remember.

12 Q. I want to -- do you recall providing any --  
13 any comments to MIMC or international Paper or their  
14 counsel with regard to the content of the unilateral  
15 administrative order?

16 MR. WILKIN: I'll instruct the witness  
17 not to answer.

18 Q. Can you take a look -- turn to the second page  
19 under the Section IV, findings of fact. I want to call  
20 your attention to -- first, let's look at paragraph 7.

21 A. Uh-huh.

22 Q. And it says, The Site includes an abandoned  
23 20-acre tract of land -- and then defines that as  
24 tract -- consisting of three waste ponds containing  
25 hazardous substances partially submerged in the San

1 Jacinto River as well as wherever those hazardous  
2 substances have been deposited, placed, or otherwise  
3 come to be located.

4 Okay. That's the first sentence of  
5 paragraph 7. Correct?

6 A. Yes.

7 Q. Do you agree with that description of the site  
8 as being consisting of three waste ponds containing  
9 hazardous substances partially submerged in the San  
10 Jacinto River as of the time of the administrative order  
11 in 2010?

12 MR. BALLARD: Object to form.

13 MR. WILKIN: Form.

14 A. Those -- this is an EPA findings of fact. I  
15 don't really have any reason to agree or disagree with  
16 it.

17 Q. It also states that aerial photographs as  
18 early as the 1970s indicate the tract inundated by the  
19 San Jacinto River. Have you seen aerial photographs of  
20 this area back in the 1970s?

21 A. Yes.

22 Q. Is that a fair characterization, then, that as  
23 early as the '70s the aerial photographs indicate that  
24 the site was inundated by the San Jacinto River?

25 MR. BALLARD: Object to form.

1 MR. WILKIN: Form.

2 A. I don't have an opinion about that.

3 Q. So you don't have an opinion one way or the  
4 other as to whether or not findings of fact, paragraph 7  
5 is accurate?

6 A. That's correct.

7 Q. Let's look on the next page at paragraph 10,  
8 the numbered paragraph 10.

9 THE VIDEOGRAPHER: You want to zoom in  
10 just a little bit?

11 Q. Paragraph 10 says, According to Champion's  
12 business records, Champion's Pasadena paper mill  
13 produced pulp and paper using chlorine as a bleaching  
14 agent. These processes used various forms of chlorine.  
15 Including liquid chlorine, aluminum chloride, and sodium  
16 chlorate. Do you agree or disagree with that -- those  
17 statements?

18 MR. STANFIELD: Objection. Form.

19 MR. WILKIN: Object. Form.

20 A. Again, these are EPA's statements of fact. I  
21 don't have any reason to agree or disagree. I don't  
22 have any personal knowledge of them.

23 Q. Okay. Have you done anything to look into the  
24 practices of the Champion facility that generated the  
25 waste at the site?

1 A. No.

2 Q. It goes on in paragraph 10 to say the pulp  
3 bleaching process forms polychlorinated  
4 dibenzo-p-dioxins and polychlorinated dibenzofurans as a  
5 by-product and those by-products are found in the paper  
6 mill sludge generated from this process.

7 Again, do you agree or disagree with that  
8 portion of paragraph 10?

9 MR. STANFIELD: Objection. Form.

10 A. I don't have any reason to agree or disagree.

11 Q. So you don't have any basis for in any work  
12 that you did at the site for disagreeing with the  
13 statement. Is that fair to say?

14 MR. BALLARD: Object to the form.

15 MR. WILKIN: Objection. Form.

16 A. I don't disagree or agree.

17 Q. Has any of the work that you did at the -- at  
18 the site give you any basis to disagree with the  
19 statements in paragraph 10?

20 MR. BALLARD: Object to the form.

21 MR. WILKIN: Form.

22 A. Again, these are EPA statements. I don't have  
23 any basis to agree or disagree with them.

24 Q. Paragraph 11 says the waste paper sludge was  
25 placed in three ponds on the tract. Waste pond 1 is

1 located on the western portion of the tract totaling  
2 132,386 square feet.

3 Do you agree or disagree with that --  
4 those statements in paragraph 11?

5 MR. STANFIELD: Objection. Form.

6 MR. WILKIN: Form.

7 A. I don't agree or disagree.

8 Q. Waste pond 2 and waste pond 3 on the eastern  
9 portion of the tract totaling 46,182 square feet and  
10 188,641 square feet, respectively. Do you agree or  
11 disagree with that statement?

12 MR. STANFIELD: Objection. Form.

13 MR. WILKIN: Form.

14 A. Again, I don't agree or disagree.

15 Q. Has Anchor done anything in connection with  
16 their work at the site to try to determine the size of  
17 these ponds that are described in Exhibit 11?

18 MR. STANFIELD: Objection. Form.

19 A. Not specifically.

20 Q. Paragraphs 12 through 15 talk about things in  
21 the 1965-66 time frame. Did you review any of the  
22 historical documents from 1965 and 1966 associated with  
23 this site?

24 A. Yes.

25 Q. Do -- then do you agree or disagree with the



1 statements in paragraphs 12 through 15?

2 MR. STANFIELD: Objection. Form.

3 A. I don't have those documents in front of me.  
4 These are EPA's statements. I don't really have any  
5 reason to agree or disagree.

6 Q. Paragraph 15 -- 16 there at the bottom of the  
7 page, talks about the current state of the tract and  
8 that it is inactive and approximately half of the tract  
9 surface area, including the abandoned waste disposal  
10 ponds, is now submerged below the adjacent San Jacinto  
11 River waste -- water surface.

12 Do you agree or disagree with that  
13 statement as the condition of the site in 2009 when this  
14 document was created?

15 MR. WILKIN: Object to the form.

16 A. Again, I don't agree or disagree with it.

17 Q. When was the first time you ever went to the  
18 site yourself, sir?

19 A. Like I said, I'm not real good with dates, but  
20 soon after we started working on the site.

21 Q. And how many times would you say you've been  
22 to the site since 2008?

23 A. I don't know the exact number. Several times.

24 Q. Several? More than 10? More than 100?

25 A. Probably less than 10.

1           Q.    Less than 10.  Do you believe -- well, you  
2  were at the site prior to the time when the TCRA cap was  
3  placed on the site.  Correct?

4           A.    Yes.

5           Q.    Did you observe that some of the site's  
6  surface area, including parts of the abandoned waste  
7  disposal pits, were submerged under the San Jacinto  
8  River when you were there?

9                   MR. BALLARD:  Object to form.

10          A.    There was water.

11                   MR. MUIR:  Object to the responsiveness.

12          Q.    When you were there prior to the time when the  
13  Time Critical Removal Action cap was placed, were parts  
14  of the pits submerged in the San Jacinto River?

15                   MR. BALLARD:  Object to the form.  Asked  
16  and answered.

17          A.    There were -- there were parts of the area  
18  that were submerged.

19          Q.    Parts of the area that are now covered by the  
20  cap are under the San Jacinto River.  Correct?

21          A.    Yes.

22          Q.    I want you to turn to the following page.  
23  Look at paragraph 19.  Talks about the TCEQ study of  
24  total maximum daily loads for dioxins in the Houston  
25  Ship Channel.  Do you see the reference in the beginning

1 of paragraph 19?

2 A. Yes.

3 Q. Have you reviewed that -- that study?

4 A. Parts of it.

5 Q. It then says that samples of sediment and fish  
6 tissue were collected in the summer of 2002, fall 2002,  
7 and spring 2003. The data collected indicated the  
8 continued presence of dioxin contamination in the San  
9 Jacinto River surrounding the tract.

10 Did you review the data on the samples of  
11 sediment and fish tissue that were reported in that 2004  
12 study?

13 MR. RILEY: Object to form.

14 A. I don't remember exactly what I reviewed.  
15 That program has been going on for a long time.

16 Q. So do you agree or disagree that the data  
17 indicated continued presence of dioxin contamination in  
18 the San Jacinto River surrounding the tract?

19 MR. STANFIELD: Objection. Form.

20 A. Again, I don't agree or disagree with the  
21 statement.

22 Q. Let's look at paragraph 20. The second  
23 sentence says the TW -- TPWD, Texas Parks & Wildlife  
24 Department submitted a 1982 topographic map and aerial  
25 photographs of the map indicating much of the land area

1 had been submerged due to subsidence. Do you see where  
2 I'm referring to there?

3 A. Yes.

4 Q. Do you know if you've reviewed these -- the  
5 '82 topographic map and the aerial photographs that are  
6 referenced?

7 A. I don't believe I have.

8 Q. Have you reviewed other historical aerial  
9 photographs of the site area?

10 A. Yes.

11 Q. Did those historical aerial photographs that  
12 you reviewed show that much of the land area had been  
13 submerged?

14 MR. BALLARD: Object to form.

15 A. There's been subsidence throughout the area.  
16 It's fairly well known.

17 Q. My question, though, is whether those aerial  
18 photographs that you reviewed showed that portions of  
19 the site were submerged in the San Jacinto River.

20 MR. STANFIELD: Objection. Form.

21 MR. BALLARD: Object to form.

22 A. It actually says submerged due to subsidence.  
23 I don't know if it was or not. I don't have an opinion  
24 about the statement.

25 Q. Okay. My question is: With respect to the

1     aerial photographs that you indicated that you reviewed  
2     of this area, did those show that portions of the site  
3     were submerged under the water of the San Jacinto River?

4                     MR. BALLARD:   Object to the form.

5                     MR. STANFIELD:  Objection.   Form.

6             A.     This statement is particular to a 1982  
7     topographic map and aerial photograph that I don't know  
8     that I've seen or have.

9             Q.     And I'm no longer asking a question about that  
10    specific photograph.  You said you had reviewed other  
11    aerial photographs.  I'm asking you whether any of those  
12    aerial photographs showed that portions of the site were  
13    submerged under the San Jacinto River.

14                    MR. BALLARD:   Object to the form.

15                    MR. STANFIELD:  Objection.   Form.

16             A.     I don't know if any aerial photographs show  
17    that.  There are portions of the site, as you just  
18    described.

19             Q.     So you certainly don't have any -- anything  
20    that would allow you to disagree with the  
21    characterization of those items in paragraph 20.  
22    Correct?

23                    MR. BALLARD:   Object to the form.

24                    MR. WILKIN:   Form.

25             A.     I don't agree or disagree with them.

1 Q. Looking on the next page, paragraph 22, first  
2 sentence says, "Contaminants can be documented entering  
3 the San Jacinto River by direct observation." You see  
4 that?

5 A. Yes.

6 Q. Do you agree or disagree with that statement  
7 as of --

8 MR. STANFIELD: Objection. Form.

9 Q. -- as of the time that this was created in  
10 2009?

11 MR. STANFIELD: Objection. Form.

12 MR. WILKIN: Objection. Form.

13 A. Again, it's an EPA statement. I don't agree  
14 with it or disagree with it.

15 Q. Is -- is the fact that this is a statement of  
16 finding of fact in a document from the EPA -- is that,  
17 in and of itself, a reason that you can or cannot agree  
18 with these statements?

19 MR. BALLARD: Objection. Form.

20 A. No.

21 Q. Paragraph 23 says, Chemical analysis confirms  
22 that dioxin and dibenzofuran contaminants are entering  
23 the San Jacinto River. Do you agree or disagree that in  
24 2009 the chemical analysis confirmed that dioxin and  
25 dibenzofuran contaminants were entering the San Jacinto

1 River?

2 MR. BALLARD: Object to form.

3 MR. WILKIN: Form.

4 A. I don't agree or disagree with the statement,  
5 other than dioxins and furans are ubiquitous throughout  
6 the environment.

7 MR. MUIR: Object to responsiveness.

8 Q. Do you agree or disagree that chemical  
9 analysis documented the presence of numerous dioxin  
10 congeners in the source sediments at the site?

11 MR. BALLARD: Objection to form.

12 MR. STANFIELD: Objection to form.

13 A. That's not what's written here, and I don't  
14 agree or disagree.

15 Q. So -- so you have no opinion as to whether  
16 chemical analysis has documented the presence of  
17 numerous dioxin congeners in the source sediments?

18 MR. BALLARD: Object to form.

19 A. As I said, I don't agree or disagree with  
20 these statements. Dioxins are ubiquitous in the  
21 environment.

22 MR. MUIR: Object to responsiveness.

23 Q. Paragraph 23 goes on to say, In addition,  
24 sediment samples collected within the surface waste  
25 ponds indicate that concentrations of hazardous

1 substances are present at levels significantly greater  
2 than upstream and downstream background levels and in  
3 concentrations greater than the corr -- greater than the  
4 corresponding by contact required quantitation levels.

5 A. I think it's contract required.

6 Q. Okay. Have you reviewed data from samples  
7 taken, collected within the surface waste ponds?

8 A. Yes.

9 Q. Have you reviewed the data for the samples  
10 taken upstream and downstream of the -- of the site?

11 A. Yes.

12 Q. Do -- does the data that was collected for  
13 samples within the surface waste ponds show that there  
14 are levels of dioxins that are higher than upstream and  
15 downstream sediment samples taken?

16 MR. STANFIELD: Objection. Form. And  
17 Dr. Keith, do not speculate as to what you think you  
18 remember.

19 MR. WILKIN: Form.

20 MR. STANFIELD: If you need to review  
21 something, you should review it first.

22 A. We should probably pull out the reports and  
23 review the information in the reports that we prepared.  
24 These are all information EPA's reviewed and prepared,  
25 and I really don't agree or disagree with their



1 statements in this form.

2 Q. Turn to the next page. Let's look at  
3 paragraph 25. Paragraph 25 says that both human and  
4 ecological health is threatened by releases of hazardous  
5 substances from the tract.

6 In 2009 when this document was prepared,  
7 do you agree that that was a true statement or not?

8 MR. BALLARD: Object to form.

9 MR. WILKIN: Objection. Form.

10 A. Again, I don't agree or disagree.

11 Q. So you have no opinion as to whether human and  
12 ecological health was threatened by releases of  
13 hazardous substances from the tract in 2009?

14 MR. BALLARD: Object to form.

15 A. I have no opinion.

16 Q. I'm sorry. I couldn't hear you.

17 A. I have no opinion on that.

18 Q. Okay. Look at paragraph 37. Says on July 17,  
19 2009, EPA sent a special notice letter to Respondents  
20 offering them an opportunity to negotiate and enter into  
21 an administrative order on consent, paren, quote, AOC,  
22 closed quote, closed paren, covering the performance of  
23 an RI/FS of the site. However, EPA never received a  
24 Good Faith Offer in which to begin negotiations of an  
25 RI/FS for the site.

1                   Do you agree or disagree with that  
2 statement?

3                   MR. BALLARD: Objection. Form.

4                   MR. WILKIN: Form.

5           A.    I don't agree with it or disagree with it.

6           Q.    Looking at paragraph 41, statement says,"  
7 Respondent McGinnes Industrial Maintenance Corporation  
8 operated the waste disposal facility at the time of  
9 disposal of hazardous substances at which such hazardous  
10 substances were disposed of at the site."

11                   Do you agree or disagree with that  
12 statement?

13                   MR. BALLARD: Object to the form.

14                   MR. WILKIN: Objection. Form.

15           A.    Again, I don't agree or disagree with it.

16           Q.    Did -- do you -- do you believe that any of  
17 these statements we've read, the findings of fact in the  
18 unilateral administrative order, were important at all  
19 to the work that you had to do at the -- at the site?

20                   MR. WILKIN: Objection. Form.

21           A.    They were part of this order that directed us  
22 to complete an RI/FS for the site.

23           Q.    Well, do you think, in doing your work to  
24 complete the RI/FS at the site, that it would be  
25 important to know whether contaminants could be

1 documented entering the San Jacinto River at the time  
2 this was written in 2009 when the order was issued?

3 MR. BALLARD: Objection. Form.

4 MR. WILKIN: Form.

5 A. Yeah, the purpose of our work was really after  
6 the order and establishing baseline conditions and  
7 developing the remedial investigation/feasibility study.  
8 A lot of this is historical information.

9 Q. Okay. So the historical information about how  
10 the waste came to be at the -- at the site was not  
11 really critical to the work that you were being asked to  
12 do?

13 MR. WILKIN: Objection. Form.

14 A. Historical information was considered, but it  
15 was more important what the present-day condition was.

16 Q. Let's -- before we leave -- look at the page  
17 ending in 222 that starts Section XI, work to be  
18 performed. That carries on paragraph 52, then on  
19 through paragraph 61. Correct?

20 A. Yes.

21 Q. And you've reviewed this section, the work to  
22 be performed, under the UAO. Correct?

23 A. Yes.

24 Q. Would you say that this accurate accurately  
25 reflects what you were asked to do on behalf of MIMC and

1 International Paper with respect to the RI/FS?

2 MR. BALLARD: Objection. Form.

3 MR. WILKIN: Objection. Form.

4 MR. STANFIELD: Objection. Form.

5 A. I guess we could go through it sort of  
6 paragraph by paragraph. It talks about work to be  
7 performed by a variety of people, I think.

8 Q. The references -- like, if we look at  
9 paragraph 53, says "Respondents shall conduct the RI/FS  
10 in accordance with the provisions of this order." Do  
11 you see where I'm referring to there?

12 A. Yes.

13 Q. The respondents in this case are the two  
14 companies, International Paper and McGinnes Industrial.  
15 Correct?

16 MR. BALLARD: Object to the form.

17 A. That's my understanding.

18 Q. Okay. So anywhere this says respondents shall  
19 conduct or respondents shall do, those are references to  
20 International Paper and McGinnes?

21 MR. BALLARD: Object to form.

22 MR. WILKIN: Objection. Form.

23 Q. You can answer.

24 A. It's the respondents, yes.

25 Q. Now, paragraph 21, if you turn back to the

1 page that ends in Bates No. 231, look at paragraph 90.

2 A. I'm lost now. What page are we on?

3 MR. WILKIN: 231.

4 Q. The one that ends in Bates No. 231.

5 A. Okay.

6 Q. This Section XXI is titled Community  
7 Relations. Do you see that?

8 A. Yes.

9 Q. And it provides that the respondents, again,  
10 shall cooperate with EPA in providing information  
11 relating to the work required hereunder to the public.  
12 You see that?

13 A. Yes.

14 Q. So you understand that the terms of this  
15 order -- one of the things that MIMC and International  
16 Paper were required to do was help provide information  
17 related to what they were doing, to the public and  
18 cooperate with the EPA in doing that?

19 MR. STANFIELD: Objection. Form.

20 MR. WILKIN: Form.

21 A. Yeah, I think that's -- a lot of the  
22 directives in here are legal in terms. And again, I'm  
23 not a legal representative here, so I would defer to  
24 that type of representation to answer that question.

25 Q. Have you been involved in preparing

1 information that's been -- gone out to the public  
2 related to the site or the work at the site?

3 A. Yes.

4 Q. And was that done as part of the work in  
5 response to the UAO?

6 MR. STANFIELD: Objection. Form.

7 MR. WILKIN: Objection. Form.

8 A. It was done as part of the RI/FS process.

9 Q. The RI/FS process, which is the subject in  
10 this case of the unilateral administrative order?

11 MR. BALLARD: Object to form.

12 A. Yes.

13 Q. Have you also participated in public meetings  
14 which have been held or sponsored by the EPA to explain  
15 activities that were being done at the site?

16 A. Yes.

17 Q. And what was your understanding as to your  
18 role at public meetings where the site was discussed?

19 A. It was usually at the request of EPA to be  
20 able to answer questions related to activities we may be  
21 performing.

22 Q. So when you were participating, you were there  
23 to assist the EPA in providing information to the public  
24 about what was going on at the site?

25 MR. BALLARD: Object to the form.

1 MR. WILKIN: Form.

2 Q. Or what work you might be doing in the future  
3 at the site?

4 MR. BALLARD: Same objection.

5 A. It was to provide -- I guess if questions came  
6 up, they would ask me specifically, you know, what --  
7 what we may plan to do or what we had done.

8 Q. Did that happen on occasion where you were  
9 asked questions about what was done at the site?

10 A. Yes.

11 Q. Or what might be done in the future at the  
12 site?

13 A. Yes.

14 Q. And this is clearly not the first site where  
15 you've worked at as a Superfund coordinator. Correct?  
16 You told us you've had other experience?

17 A. That's correct.

18 Q. And one of the things that is done related to  
19 Superfund sites is providing information to the  
20 community. You've done that at other sites as well?

21 MR. BALLARD: Object to form.

22 A. Not as directly.

23 Q. When you say not as directly, what -- what do  
24 you mean by that?

25 A. This site has, for instance, a community

1 awareness committee, whereas other sites I've been  
2 on don't have similar -- similar committees.

3 Q. Okay. But is it -- is it your understanding  
4 that part of the Superfund process involves providing  
5 information to the communities in the area of these  
6 Superfund sites?

7 MR. STANFIELD: Objection. Form.

8 MR. WILKIN: Form.

9 A. Generally, there is a community outreach  
10 component to these projects, yes.

11 Q. When you were working providing information at  
12 these community meetings, did you consider it your job  
13 to provide impartial factual information with regard to  
14 the site?

15 MR. BALLARD: Object to form.

16 A. Yes.

17 Q. Let me show you now what was previously marked  
18 as Exhibit 118. First, I just want to ask you if you've  
19 seen Exhibit 118 before.

20 A. I believe I have.

21 Q. Could you tell us what Exhibit 118 is?

22 A. It's a request for a Time Critical Removal  
23 Action at the site from Valmichael Leos to Charles  
24 Faultry.

25 Q. And the purpose of this is set forth,



1 according to the document, in that first paragraph.

2 Correct?

3 MR. BALLARD: Object to the form.

4 MR. WILKIN: Objection. Form.

5 Q. The one entitled purpose?

6 MR. BALLARD: Object to the form.

7 MR. WILKIN: Form.

8 A. So can you repeat the question?

9 Q. Sure. The purpose for the document is set  
10 forth in the very first paragraph entitled purpose.  
11 Correct?

12 MR. BALLARD: Objection. Form.

13 MR. WILKIN: Form.

14 A. It's titled purpose. That's correct, yes.

15 Q. And it states in the last sentence of that  
16 first paragraph, "The removal action is to stabilize the  
17 site, temporarily abating the release of polychlorinated  
18 dibenzo-p-dioxins, and polychlorinated dibenzofurans  
19 (and possibly PCBs) into the waterway, until the site is  
20 fully characterized and a remedy is selected." You see  
21 where that -- where I'm referencing?

22 A. Yes.

23 Q. Since it states that it's to -- one of the  
24 purposes, temporarily abating the release of these  
25 chemicals, that indicates that those chemicals were

1 being released here in 2010 when this document was  
2 created, doesn't it, sir?

3 MR. BALLARD: Object to the form.

4 MR. WILKIN: Form.

5 A. Again, these are -- this is just like your  
6 other order that was just reviewed. It's an EPA  
7 document. These are EPA statements. I --

8 MR. BALLARD: Excuse me. He's not  
9 finished.

10 MR. MUIR: I'm sorry.

11 A. I don't have an opinion on this specific  
12 sentence.

13 Q. Well, do you agree that the purpose of this  
14 removal action was to stabilize the site, or one of the  
15 purposes was to stabilize the site?

16 MR. BALLARD: Object to the form.

17 MR. WILKIN: Objection. Form.

18 A. That's what's written here by EPA.

19 Q. And I'm asking you, sir, if you agree or  
20 disagree with that.

21 MR. STANFIELD: Objection. Form. Asked  
22 and answered.

23 A. I don't have any reason to agree or disagree  
24 with it.

25 Q. Well, then tell me what, in your

1 understanding, was the purpose for the Time Critical  
2 Removal Action.

3 MR. STANFIELD: Objection. Form.

4 A. The -- in its simplest form, the Time Critical  
5 Removal Action involved placing a cap over the former  
6 impoundment.

7 Q. Okay. And what was the intended result of  
8 placing the cap around the former impoundment?

9 MR. BALLARD: Object to form.

10 MR. WILKIN: Form.

11 A. We were trying to meet the objectives of EPA's  
12 request.

13 Q. Was one of the objective of EPA's request to  
14 abate the release of dioxins and furans?

15 MR. BALLARD: Object to the form.

16 MR. WILKIN: Form.

17 A. Again, those are EPA words. Their objectives  
18 are outlined pretty clearly in this document.

19 Q. So is it your testimony, then, sir, that you  
20 really have no opinion, one way or the other, whether,  
21 for instance, there were releases going on in April of  
22 2010 from the site?

23 MR. WILKIN: Objection. Form.

24 A. I do not.

25 THE REPORTER: What was your answer?

1 THE WITNESS: I do not.

2 Q. And whether or not there were releases  
3 occurring from the site in April of 2010, does that --  
4 did that affect or not affect the work that you were  
5 doing to carry out the Time Critical Removal Action?

6 MR. BALLARD: Object to the form.

7 MR. WILKIN: Form.

8 A. It really didn't affect it either way. We  
9 completed the work as efficiently as we could.

10 Q. Let's look at the second page. Talks about  
11 site description and removal site evaluation and it  
12 indicates that in July 2005 samples were collected from  
13 the tract. And it provides a chart which has different  
14 -- different congeners of dioxin and furans and the  
15 sample results in parts per trillion or nanograms per  
16 kilogram. Do you see that portion?

17 A. Yes.

18 Q. Did you review the data that went into this  
19 chart on the second page of the TCRA request?

20 A. I reviewed it in this form. I didn't review  
21 the actual raw data or anything.

22 Q. Do you have any reason to believe that the  
23 data is not accurate?

24 MR. BALLARD: Object to the form.

25 MR. WILKIN: Form.

1           A.    I don't really have an opinion about that  
2 either way.

3           Q.    Going down to the discussion under that chart,  
4 indicates a recent site visit by EPA remedial project  
5 managers Leos and -- is this Tzhone that we were talking  
6 about?

7           A.    Yes.

8           Q.    Okay.  -- on Monday, March 1st, 2010,  
9 documented grayish waste entering the San Jacinto River  
10 along the northwest corner of the site from waste pond  
11 1.

12                   Okay.  Now, do you have any reason to  
13 disagree with the statement that the remedial project  
14 managers documented grayish waste entering the San  
15 Jacinto River from the corner of the site?

16                   MR. BALLARD:  Object to the form.

17                   MR. WILKIN:  Form.

18           A.    I wasn't there.  I don't agree or disagree  
19 with it with them.

20           Q.    In your time at the site, did you ever observe  
21 grayish waste entering the river from the site?

22           A.    No.

23           Q.    And you said that you weren't there on March  
24 1st 2010 when they made this visit.  Is that correct?

25           A.    That's correct.

1           Q.    So you would have no information to dispute  
2   the statement that 95 percent of the waste pond 2 was  
3   observed to be under water -- observed to be under 4  
4   feet of water on that date?

5                   MR. BALLARD:  Object to the form.

6           A.    As I said, I don't agree or disagree with it.

7           Q.    Let's look at this next paragraph.  Do you  
8   believe you were at the site in 2010?

9           A.    Yes.

10          Q.    Would you agree, then, that the statement that  
11   there is no containment to prevent migration of  
12   hazardous substances from the waste ponds to the San  
13   Jacinto River at that time?

14                   MR. BALLARD:  Object to the form.

15                   MR. WILKIN:  Form.

16          A.    I don't agree or disagree with it.

17          Q.    Do you agree or disagree with the sentence  
18   that chemical analysis confirms that dioxin and  
19   dibenzofuran contaminants are entering the San Jacinto  
20   River at the time in 2010?

21                   MR. BALLARD:  Object to the form.

22                   MR. WILKIN:  Form.

23          A.    Again, I don't agree or disagree with the  
24   statement.

25          Q.    Let me ask you if you'd look at page 3.  The

1 last full paragraph before numbered paragraph 4 starts  
2 out, The primary hazardous substances documented at the  
3 site are polychlorinated dibenzo-p-dioxins and  
4 polychlorinated dibenzofurans. You see where I'm --  
5 have you found that?

6 A. Yes.

7 Q. Do you agree with that assertion as to the  
8 primary hazardous substances that were documented at the  
9 site?

10 MR. BALLARD: Object to the form.

11 A. I don't have any reason to agree or disagree  
12 with that statement.

13 Q. Would you agree that the polychlorinated  
14 dibenzo-p-dioxins and polychlorinated dibenzofurans were  
15 the primary hazardous substances found in the Anchor/  
16 Integral work at the site?

17 MR. BALLARD: Object to the form.

18 MR. WILKIN: Objection. Form.

19 A. I would just say that those were part of our  
20 investigation.

21 Q. But you wouldn't classify them as the primary  
22 hazardous substances documented there in your work?

23 MR. STANFIELD: Objection. Form.

24 A. I'm not sure what they mean by primary  
25 hazardous substances, so I don't really want to make an

1 opinion about that.

2 Q. Notwithstanding what the EPA may have meant,  
3 do you consider those to be the primary hazardous  
4 substances documented at the site by Anchor's work or  
5 Integral's work?

6 MR. BALLARD: Object to the form.

7 MR. WILKIN: Form.

8 MR. BALLARD: Asked and answered.

9 A. Yeah, I just go back to there are substances  
10 that we evaluated during the remedial investigation.

11 Q. Are those substances, in your mind, any more  
12 important to the investigation than any other substances  
13 found at the site?

14 MR. BALLARD: Object to the form.

15 MR. WILKIN: Form.

16 A. That was -- there was certainly important in  
17 the investigation, yes.

18 Q. Are there any other substances that you feel  
19 are of equal importance to these, the dioxins and  
20 furans, at the site?

21 MR. STANFIELD: Objection. Form.

22 A. Not at this site.

23 Q. Let's look at page 6. Have you reviewed --  
24 and looking in this paragraph under Section A1, IIIA1  
25 here, it notes that a release of these contaminants from



1 both waste ponds has been identified through site  
2 assessment activities conducted by EPA and TCEQ in 2006.  
3 I'm going to ask you just about that.

4 Have you reviewed any of the site  
5 assessment activities conducted by EPA and TCEQ in 2006?

6 A. Yes.

7 Q. Okay. Do you agree that they document release  
8 of the contaminants, the furans and the dioxins, from  
9 the waste ponds at the site?

10 MR. STANFIELD: Objection. Form.

11 MR. WILKIN: Form.

12 A. Again, I don't have those documents in front  
13 of me; but either way, they're statements and  
14 conclusions made by EPA and TCEQ. And I don't have any  
15 reason to agree or disagree with them.

16 Q. That sentence finishes, "there is a threat of  
17 further release." In 2010, do you believe that there  
18 was a threat of future release of furans and dioxins  
19 from the site?

20 MR. BALLARD: Object to the form.

21 MR. WILKIN: Form.

22 A. Again, those are their words. I don't agree  
23 or disagree with them.

24 Q. So you're not going to come into court, then,  
25 and testify at trial in this case that you disagree

1     that -- and you believe that there was no threat of a  
2     release of dioxins or furans from the site in 2010?

3                   MR. STANFIELD:  Objection.  Form.  And  
4     I'll instruct the witness not to answer about any  
5     discussions he may or may not have about what he might  
6     or might not hypothetically testify about at trial, and  
7     that it's an improper question.  So Dr. Keith, I'm just  
8     going to instruct you not to testify in response to that  
9     question.

10                   THE WITNESS:  Okay.

11           Q.     And I think you testified earlier that you had  
12     no opinion as to whether human and ecological health was  
13     threatened by releases of hazardous substances from the  
14     tract, as indicated in this paragraph that's  
15     highlighted?

16                   MR. BALLARD:  Object to the form.

17                   MR. WILKIN:  Object to the form.

18           A.     I don't agree or disagree with what's written  
19     here.  I'm not a ecological or human health risk  
20     assessor.

21           Q.     Are you familiar with the health effects of  
22     exposure to dioxins?

23           A.     No.  I'm not a toxicologist.

24           Q.     So I take it you have no opinion as to the  
25     statements with regard to the common health effects to

1 people of exposure to the waste at the site?

2 A. That's correct.

3 Q. Are you familiar with the U.S. Department of  
4 Health and Human Services' stand on whether dioxins may  
5 cause cancer?

6 A. Am I familiar with what their stance on it is?

7 Q. Yes.

8 A. No.

9 Q. I'll direct your attention to page 7, the last  
10 full paragraph on that page, which states that  
11 Currently, the site consists of two waste -- okay.  
12 "Currently, the site consists of two waste ponds  
13 (Attachment 2) containing three surface impoundments.  
14 Waste pond #1 containing one of the surface impoundments  
15 is currently being eroded by the San Jacinto River and  
16 the contents of the ponds are being released into the  
17 waterway."

18 In 2010, would you agree that the -- the  
19 contents were being -- that the pond was being eroded  
20 and the contents were released into the waterway?

21 MR. BALLARD: Object to the form.

22 MR. WILKIN: Objection. Form.

23 A. Again, these are EPA's statements. I don't  
24 have any reason to agree or disagree with the  
25 statements.

1           Q.    You were out at the site in 2010.  Did you  
2 observe erosion of the ponds out there?

3           A.    No.

4                   MR. STANFIELD:  Object to the form.

5           Q.    I'm sorry.  I couldn't hear you.

6           A.    No.

7           Q.    So was -- whether the ponds were eroding and  
8 the materials being released into the river in 2010,  
9 that was just of no concern to you in terms of the work  
10 to be done on the TCRA?

11                   MR. BALLARD:  Object to the form.

12                   MR. WILKIN:  Objection.  Form.

13           A.    The work to be done on the TCRA, per EPA, was  
14 to stabilize the entire former impoundments, you know,  
15 going out to the original perimeter that they  
16 designated.  And that's what we focused on.  We didn't  
17 focus on what had occurred in the past or what was  
18 occurring in the present.  That was their directive to  
19 us, is to develop a plan that would address that entire  
20 area.

21           Q.    It was called a Time Critical Removal Action.  
22 You're familiar with the difference between a Time  
23 Critical and a Nontime Critical Removal Action at a  
24 Superfund site, aren't you, sir?

25                   MR. BALLARD:  Object to form.

1           A.     In the context of -- a time critical has a  
2     six-month completion window on it for construction.  
3     That's the largest difference, to me.

4                   THE REPORTER:   That's what largest what?

5                   THE WITNESS:   Difference.

6           Q.     And was it your understanding that the EPA  
7     called for a Time Critical Removal Action in this case  
8     because the contaminants in the waste pits were  
9     continuing to be released into the San Jacinto River?

10                   MR. STANFIELD:   Objection to form.

11                   MR. BALLARD:   Objection.   Form.

12                   MR. WILKIN:   Form.

13           A.     My understanding is that they requested us to  
14     complete a Time Critical Removal Action.

15           Q.     Is it your understanding that EPA considered  
16     the pits in their condition in 2010 when this was issued  
17     to be an imminent threat to human health and the  
18     environment?

19                   MR. STANFIELD:   Objection.   Form.

20                   MR. BALLARD:   Objection.   Form.

21           A.     That's an EPA interpretation.   I don't know  
22     exactly what their interpretation was, and I don't have  
23     a reason to, as I said, agree or disagree with their  
24     interpretations.

25                   MR. STANFIELD:   I need a break.

1                   THE VIDEOGRAPHER: Off the record at  
2   1:49.

3                   (Break taken.)

4                   THE VIDEOGRAPHER: We're back on the  
5   record at 2:02.

6           Q.    Mr. Keith, let's talk some about what you and  
7   Anchor were tasked to do with regard to the TCRA. After  
8   the document that we were just reviewing came out, at  
9   some point there was an administrative order on consent,  
10   an AOC, that was entered into between EPA and MIMC and  
11   International Paper for the actual carrying out of the  
12   TCRA. Correct?

13          A.    Yes.

14          Q.    And under that, MIMC and International Paper  
15   were first required to submit analysis of alternatives  
16   for exactly how to perform that work or what was to be  
17   done. Is that accurate?

18          A.    Yes.

19          Q.    And that was submitted to the EPA. Correct?

20          A.    Yes.

21          Q.    And let me show you what we're going to mark  
22   as Exhibit 453 and ask you if you -- first ask you if  
23   you recognize Exhibit 453.

24                   (Exhibit 453 marked.)

25          A.    I'm sorry. What was the question?

1 Q. First off, do you recognize Exhibit 453?

2 A. I think I've seen it before. It's been a  
3 while.

4 Q. Its subject is Decision Document for Time  
5 Critical Removal Action at the San Jacinto River Waste  
6 Pits Site, Harris County, Texas. Correct?

7 A. Yes.

8 Q. This is the document where the EPA came out  
9 and said this is what we're going to choose as the  
10 method for doing the TCRA and gives reasons for that.  
11 Basically, what this document is for. Correct?

12 MR. WILKIN: Objection. Form.

13 MR. MUIR: I'm sorry, Counsel. What was  
14 improper with the form of the question?

15 MR. WILKIN: Well, you're not reading  
16 from the document. You're characterizing what a 10-page  
17 document is for and what the EPA intended by it.

18 MR. MUIR: And you think that's an  
19 improper question in what form?

20 MR. WILKIN: Well, you're characterizing  
21 the evidence.

22 Q. You can answer the question, sir.

23 A. The last -- well, Section V provides preferred  
24 TCRA alternative option. And in C of that, it says  
25 preferred TCRA alternative.

1           Q.    You tell me, then, what your understanding of  
2 the purpose of this document, Exhibit 453, is.

3                   MR. STANFIELD:  Objection.  Form.

4           A.    I mean, that's probably a legal opinion  
5 question, but the subject, as you said, is a decision  
6 document for a Time Critical Removal Action.

7           Q.    Well, did the information contained in  
8 Exhibit 453 play any part in your role of working on the  
9 TCRA for Anchor?

10                   MR. STANFIELD:  Objection.  Form.

11           A.    Section V lays out what the preferred option  
12 is for the TCRA.

13           Q.    And that was important to your work because it  
14 essentially tells you the basis of what you're going to  
15 be doing, what the EPA selected as the removal action to  
16 be done?

17           A.    It directed us which removal action to  
18 complete, yes.

19           Q.    Now, before in Section IV talks about the  
20 proposed alternative descriptions.  And there are five  
21 listed there on page 5, Alternative 1, 2, 3, 4, and 5.  
22 You see that?

23           A.    On page -- which page?

24           Q.    It's page 5 of the document.  It ends in 76835  
25 is the Bates number in the right corner.



1           A.    Yes, I see that.

2           Q.    Okay.  So page 5 lists the five alternatives.  
3   These were the five alternatives that were put forward  
4   by MIMC and International Paper to the EPA.  Correct?

5           A.    I would say they are alternatives that were  
6   developed cooperatively with the EPA.  EPA was very  
7   involved in this process, and it was more of a  
8   collaborative effort.

9           Q.    So where -- beginning the last word on page 4,  
10   it says five alternatives were identified by the  
11   responsible parties and are summarized below.

12                    You think that's -- that mischaracterizes  
13   what happened?

14                   MR. STANFIELD:  Objection.  Form.

15           A.    I think it was a very collaborative effort  
16   between MIMC, IP, and EPA.

17           Q.    Did -- what was your role in presenting  
18   alternatives for the TCRA?

19           A.    It was the same as my role for the RI/FS.  I'm  
20   the project coordinator.  So making sure that the  
21   statement of work and the work that was performed under  
22   the AOC was performed according to the order.  And I was  
23   the direct communicator on the technical side with EPA's  
24   technical representative.

25           Q.    Did you have direct input into the specific

1 alternatives listed here on page 5?

2 A. I participated in the process.

3 Q. And a number of other people for -- for Anchor  
4 participated in that process of coming up with these  
5 alternatives?

6 A. Yes.

7 Q. Did anyone from Integral also participate in  
8 that process?

9 A. I don't think so.

10 Q. Did representatives from International Paper  
11 and MIMC contribute to that process?

12 A. They participated in the process.

13 Q. Did counsel for International Paper, Waste  
14 Management, and MIMC participate in that process?

15 MR. BALLARD: Objection. Form.

16 A. Not -- not in the direct meetings, no, where  
17 we were developing alternatives.

18 Q. Did they review the alternatives before they  
19 were submitted to the EPA?

20 MR. STANFIELD: Objection. Form.

21 A. They reviewed the documents that we submitted  
22 to EPA.

23 Q. Okay. Did they provide comments to those  
24 documents before they were submitted?

25 MR. STANFIELD: Objection. Form. Don't

1 answer on the basis of privilege for International  
2 Paper.

3 MR. WILKIN: Don't answer that.

4 Q. On page 4 under B under performance  
5 requirements, if you could -- it says that the  
6 evaluation of the TCRA alternatives for temporary  
7 abatement of actual releases of dioxin into the San  
8 Jacinto River, until the site is fully characterized and  
9 a remedy is selected, considered the following  
10 performance criteria in the TCRA memo dated April 2,  
11 2010.

12 That was the memo we were just looking at  
13 previously -- correct? -- April 2, 2010 memo?

14 MR. BALLARD: Object to the form.

15 A. Yes.

16 Q. Okay. And so numbered paragraphs 1 through 4  
17 set out the criteria by which the EPA's evaluating those  
18 -- the various alternatives. Is that your understanding  
19 of what this is supposed to set out?

20 MR. STANFIELD: Objection. Form.

21 A. This is, again, another EPA document. I  
22 wasn't involved in the direct preparation of this  
23 document. I don't really know what EPA's thoughts were  
24 as they prepared it.

25 Q. When you were working to prepare the

1 alternatives for the TCRA, you were aware of what was  
2 set out in the April 2nd, 2010, TCRA memo. Correct?

3 A. Yes.

4 Q. And so you knew that this was what the EPA was  
5 going to be looking at in making its determination?

6 MR. BALLARD: Object to form.

7 A. As I said earlier, our directive from the EPA  
8 was to place a cover over the entire former perimeter of  
9 the impoundment. And that's what we focused on doing.

10 Q. And in conjunction with putting this cover,  
11 are you saying, then, that you were not aware that one  
12 of the things that the EPA was looking at was to control  
13 erosion of waste materials from upland runoff, heavy  
14 rains, river and tidal currents?

15 MR. BALLARD: Objection. Form.

16 A. That's their objective.

17 Q. Did you -- were you aware of that objective  
18 when you put together the alternatives?

19 A. We reviewed all of their objectives, yes.

20 Q. Okay. So you were aware what the EPA was  
21 looking for when you put together the alternatives --

22 MR. STANFIELD: Objection. Form.

23 Q. -- as reflected in this exhibit?

24 MR. STANFIELD: Objection. Form.

25 MR. BALLARD: Objection. Form.

1           A.     We were aware that they wanted the site  
2 addressed, and we developed alternatives to address  
3 their concerns. And they chose one at the end of that  
4 process.

5           Q.     You were aware, then, that the -- one of the  
6 criteria was that the TCRA should withstand and remain  
7 in place and effective during and after extreme weather  
8 events for five to seven years while the nature and  
9 extent of contamination at the site was being  
10 investigated. You were aware that that was one of the  
11 criteria. Correct?

12          A.     Yes.

13          Q.     And you were aware that the intent of the TCRA  
14 was as a temporary abatement while that study was being  
15 done. Correct?

16                   MR. BALLARD: Object to form.

17          A.     I'm not sure what you mean by temporary  
18 abatement, I guess.

19          Q.     Let's look at another exhibit marked  
20 Exhibit 454.

21                   (Exhibit 454 marked.)

22          Q.     Can you identify Exhibit 454 for us, please?

23          A.     It's a draft memorandum. Says for discussion  
24 purposes only to Valmichael Leos; Mike Hasen, and HVJ  
25 Associates; Ed Barth and Steve Tzhone at EPA from our

1 engineering staff with me and Phil Slowiak and Drew  
2 Shafer copied. And it talks about the design storm  
3 event for the Time Critical Removal Action.

4 Q. The Time Critical Removal Action is what we've  
5 been talking about. This document is related to that.  
6 Correct?

7 A. Yes.

8 Q. And this was an Anchor-produced document?

9 A. That is correct.

10 Q. And let me ask you: Mike Hasen, HVJ  
11 Associates, who are HVJ Associates? Do you know?

12 A. They're a consulting firm in the Houston area.

13 Q. What was their role at this -- at this site,  
14 if you know?

15 A. They were hired to assist EPA.

16 Q. So as this says on the re line, design storm  
17 event for the San Jacinto Superfund Site Time Critical  
18 Removal Action. Can you tell us, basically, what the  
19 intent of this document was in sending it to EPA?

20 MR. STANFIELD: Objection. Form.

21 MR. MUIR: I'm sorry. What was the  
22 nature of your form objection to asking him a question  
23 about the document that his company created?

24 MR. STANFIELD: It's overbroad, it's  
25 vague, and ambiguous.

1 Q. You can answer.

2 A. I need to read the -- I haven't seen this  
3 document in a long time, so I guess I'm going to need to  
4 read it.

5 Q. Let's go off the record, then, so you can read  
6 the document.

7 MR. STANFIELD: No, we're not going off  
8 the record to read this document.

9 MR. MUIR: I'm sorry, Counsel.

10 MR. STANFIELD: Or if we want to go off  
11 the record, put the document down, Dr. Keith, and we'll  
12 take a break.

13 MR. MUIR: No. He said he needs to read  
14 the document in order to --

15 MR. STANFIELD: We'll do it on the  
16 record.

17 MR. MUIR: There's no reason for him to  
18 read the document on the record.

19 MR. AXE: You're asking him questions  
20 about it. He should read it.

21 MR. MUIR: I'm asking him to read it, but  
22 there's no reason that he has to do it on the record.

23 MR. STANFIELD: It's a part of the time  
24 that it takes for him to read the document.

25 MR. BALLARD: Yeah. In addition, your

1 question asked him -- you asked us to explain -- your  
2 question asked him to speculate as to what this document  
3 and the intent of it was. He's only cc'd on this  
4 document. He is not one of the authors of this  
5 document; therefore, he has to read the document in  
6 order to see if he can answer your questions. And  
7 that's only fair. I know you don't want to be fair to  
8 this witness, but we're going to be fair to this  
9 witness. We're going to ensure that you are. And so as  
10 a consequence, he's going to read this as long as he  
11 wants to in order to answer your question, to be fair.

12 MR. MUIR: And I never said anything  
13 other than that he should read it.

14 MR. BALLARD: Okay. Then he's going to  
15 do it.

16 MR. MUIR: But he can read it off the  
17 record.

18 MR. BALLARD: No. We're going to stay on  
19 the record. If you want to ask him questions about this  
20 document and it requires him to read it, we're going to  
21 stay on the record while he does that.

22 MR. MUIR: Then if I need time to make up  
23 for your long-winded discussions, I will go to the court  
24 and get it.

25 Q. Let me ask you specifically --



1                   MR. BALLARD: You can do whatever you  
2 want, but I think it's pretty evident that you won't get  
3 it.

4           Q. Do you know, Mr. Keith, turning to page 3 of  
5 the document --

6                   MR. STANFIELD: Dr. Keith, if you haven't  
7 finished reading it, you can finish reading it before  
8 you answer questions about it. You're trying to be  
9 unfair. He told you he wanted to read it before he  
10 answered questions, and you're trying to short-circuit  
11 it.

12                  MR. OWENS: Well, he doesn't need you to  
13 tell him to finish read it.

14                  MR. STANFIELD: Yes, he does because you  
15 two are trying to bully him right now.

16                  MR. OWENS: I'm bullying him?

17                  MR. STANFIELD: Yes.

18                  MR. OWENS: Excuse me. What did I say to  
19 this witness?

20                  MR. STANFIELD: He is entitled to read  
21 the document before answering a question about it, and  
22 you're not going to short-circuit it.

23                  MR. MUIR: Counsel, you objected to the  
24 question saying it was overly broad.

25                  MR. STANFIELD: Vague and ambiguous.

1                   MR. MUIR: I'm asking him a very specific  
2 question, then, to see if he can answer that.

3                   MR. STANFIELD: And then he said he  
4 wanted to read it before he answered your questions, and  
5 he's going to do it.

6                   MR. OWENS: You doesn't even know what  
7 the question is about. You wouldn't let him get it out  
8 of his mouth.

9                   MR. STANFIELD: That's right, because the  
10 witness was asked to review the document before he talks  
11 about it.

12                  MR. OWENS: So you can't object to the  
13 question if you don't know what the question is, can  
14 you?

15                  MR. STANFIELD: I've asked the witness if  
16 he's finished reading it, if he can read the whole  
17 document before he talks about it, or you can move on to  
18 another document.

19                  MR. OWENS: We can move back and forth  
20 from document to document, if we wish.

21                  MR. STANFIELD: That's very clever, Rock.

22                  MR. BALLARD: He can also read the  
23 document to get it in context so he can understand the  
24 question that's being asked. Hopefully, he's --

25                  MR. MUIR: The level of coaching that's

1 going on on the record is way beyond what's allowed by  
2 the rules. You know it.

3 MR. BALLARD: I really don't. I don't  
4 understand how we are coaching the witness when he has  
5 said he wants to read the document that he is only cc'd  
6 on so that he can answer your question. Hopefully, the  
7 witness is continuing to read the document while we are  
8 making these statements on the record.

9 MR. OWENS: Are you finished?

10 MR. BALLARD: I'm sorry?

11 MR. OWENS: Are you finished?

12 MR. BALLARD: It depends on what else you  
13 say, Rock.

14 MR. OWENS: I just asked if you were  
15 finished. That's all I asked. Are you?

16 MR. BALLARD: Right this minute, yes.

17 MR. OWENS: Thank you.

18 A. Okay.

19 Q. Mr. Keith, have you read the document that's  
20 marked as Exhibit 454?

21 A. Yes.

22 Q. And prior to your deposition today, you had  
23 seen this document in connection with your work on the  
24 site. Correct?

25 A. Yes.

1           Q.    Now, after having read the entire document,  
2   can you give us a basic understanding of what the intent  
3   of the document was?

4           A.    I think it was that EPA had not been clear on  
5   what's structurally sufficient to withstand forces  
6   sustained by the river or in their -- what was that? --  
7   April 2nd, 2010 document. And we were trying to get  
8   clarification on that specific issue for the design of  
9   the cap.

10          Q.    And it talks about a -- things like a 100-year  
11   storm event, a 10-year or 2-, 5-, 10-, and 25-year storm  
12   events. Could you explain, basically, what those mean  
13   as are used in this document?

14                   MR. STANFIELD:  Objection.  Form.

15          A.    Those are engineering descriptions of -- that  
16   are used in a variety of engineering analyses. And  
17   again, I'm not an engineer, but they speak to the  
18   frequency that a rain event or a storm event may occur  
19   in the area and have a corresponding reaction in the --  
20   in the waterway.

21          Q.    Can you turn to page 3, Table 1. It's  
22   entitled Percentage Chance of Occurrence. Now, can you  
23   explain what Table 1 is seeking to provide?

24          A.    This is just a description -- it's a  
25   statistical analysis of -- for a return period storm of

1 2, 5, 10, and 25 years. Here's the percent that we  
2 would -- a chance of occurrence that that would occur.  
3 It's a pure statistical analysis.

4 Q. So let me see if I understand this, then.  
5 Let's take the first line. The return period -- a  
6 return period for a storm of two years, that's what the  
7 first line is describing. Correct?

8 A. That's correct.

9 Q. Okay. And so the chance of that occurring,  
10 the second column, in any one year is what's represented  
11 in that second column. Correct?

12 A. That's correct.

13 Q. Okay. So in this case, for a return period  
14 storm of two years, the chance of it occurring in any  
15 one given year is 50 percent. Am I interpreting that  
16 correctly?

17 A. Yes.

18 Q. Okay. And then the period of concern, what  
19 does that represent in connection with this site and as  
20 used in Table 1?

21 A. That goes back to, I think, the memo that  
22 directs the TCRA that, you know, this is a remedy that  
23 should be designed until a final rod is provided for the  
24 site. And the rod would be supposedly finished in two  
25 to seven years.

1           Q.    So then the chance of a two-year return storm  
2 occurring over a two-year period is 75 percent. Is that  
3 what this represents?

4           A.    Yes.

5           Q.    Okay. And over a seven-year period, the  
6 chance is 99 percent under this statistical analysis?

7           A.    That's correct.

8           Q.    And so as you go down for each of these storm  
9 events, a 5-year, 10-year, or 25-year storm event, these  
10 provide the same -- the columns provide the same  
11 information: the percentage that it will happen in any  
12 given year, the chance of it occurring statistically in  
13 two years or in seven years. Correct?

14          A.    That's correct.

15          Q.    And the -- this document, Exhibit 454, the  
16 conclusion drawn by this document is that the TCRA  
17 should be designed to resist a 10-year return  
18 interval-flow event or a 10-year storm event. Correct?

19          A.    That's what the last sentence of the document  
20 says.

21          Q.    And that -- in fact, that's what MIMC and  
22 International Paper requested that the EPA design be in  
23 conjunction with a 10-year storm event. Correct?

24          A.    I don't know if that's what we requested.  
25 That's what -- that was part of the discussion.

1 Q. Well, then --

2 A. This -- as I pointed out, this is a draft  
3 memorandum and it is labeled for discussion purposes  
4 only.

5 Q. Okay. Do you recall at some later point,  
6 then, that there is a -- there was a formal dispute  
7 submitted to the EPA in which MIMC and International  
8 Paper requested that the EPA have the design set for a  
9 10-year storm event for the TCRA?

10 A. I don't remember that, but it could have been.

11 Q. Okay. Let me --

12 MR. BALLARD: I'm going to object to the  
13 responsiveness after "I don't remember that."

14 Q. Let me show you Exhibit No. 455.

15 (Exhibit 455 marked.)

16 Q. And Exhibit 455, for identification purposes,  
17 is a September 15, 2010, e-mail from Barbara Nann.  
18 She's with EPA. Correct?

19 A. Yes.

20 Q. To David Keith, John Cermak, Valmichael Leos,  
21 and Al Axe. Is that accurate?

22 A. Yes.

23 Q. Do you recall seeing Exhibit 455?

24 A. I don't recall. I'm sure I did, but I don't  
25 recall.

1           Q.     Looking at the second sentence, it says on  
2     September 10th, 2010, Respondents' International Paper  
3     and McGinnes Industrial Maintenance Corporation  
4     submitted to EPA separate letters invoking the dispute  
5     resolution provisions of the AOC regarding EPA's  
6     decision to have a granular cover designed to withstand  
7     the occurrence a 100-year flow event while the nature  
8     and extent of contamination from the San Jacinto  
9     Waste -- San Jacinto River Waste Pits Superfund site is  
10    characterized and a remedy is selects.

11                   Does that refresh your memory as to  
12    whether or not there was a formal request to the EPA to  
13    use this -- to use a 10- versus a 100-year flow event as  
14    the design criteria?

15           A.     That doesn't really refresh my memory.  
16    Obviously, my memory is not that good on this, but we  
17    would not have made that submittal of the letters that  
18    are cited here.

19           Q.     Okay.

20                   MR. BALLARD:   And I'll put counsel on  
21    notice that the more you use documents like this, the  
22    stronger our preemption argument is.  And I'm just going  
23    to give you a warning on the record so that you  
24    understand that.

25                   MR. MUIR:   Counsel, since your experts in



1     this case have made these things an issue, we're  
2     entitled to discuss it. That has nothing to do with  
3     preemption.

4                     MR. BALLARD: That's not what's happening  
5     here. So you're playing right into our hands, Counsel.  
6     Keep going.

7                     MR. OWENS: Gosh, Glenn, that's so  
8     generous of you to give us a warning. I appreciate it  
9     very much. I do.

10                    MR. BALLARD: And I'm glad I gave it in  
11     the presence of lead counsel.

12            Q.     Mr. Keith, do you recall being involved or  
13     being consulted about a challenge to the 100-year design  
14     criteria?

15                    MR. WILKIN: Instruct the witness not to  
16     answer.

17            Q.     Let me show you, then, what we're going to  
18     mark as Exhibit 456.

19                    (Exhibit 456 marked.)

20            Q.     First question is whether you recall having  
21     seen Exhibit 456 before.

22            A.     No, I don't.

23            Q.     If you could turn to the page that ends in  
24     Bates No. 1620, I want to ask you specifically about the  
25     second and third paragraphs starting where it says the

1 EPA's decision to recommend a granulated cover. Do you  
2 see that paragraph?

3 A. Yes.

4 Q. The EPA's decision to recommend a granulated  
5 cover designed for a storm event with a return period of  
6 100 years is consistent with removal actions authorized  
7 under the NCP.

8 Do you recall discussions with the EPA  
9 during the design of the TCRA about the reasons why EPA  
10 set the 100-year flood event as the design standard for  
11 the TCRA?

12 MR. BALLARD: Object to the form.

13 A. We had lots of conversations about that topic.  
14 I don't remember any of them specifically, I guess.

15 Q. I'm going to show you what's marked as  
16 Exhibit 457.

17 (Exhibit 457 marked.)

18 Q. First question is whether you recall having  
19 seen Exhibit 457 before.

20 A. I'm copied on it, but I don't remember seeing  
21 it.

22 Q. And as it states, this is in response to your  
23 letter dated September 23rd, 2010, regarding the  
24 above-referenced matter.

25 That appears to be a reference to the

1 document we marked as Exhibit 456 -- correct? -- the  
2 previous September 23rd, 2010 letter?

3 A. Yes.

4 Q. In looking at Exhibit 457, can you tell me  
5 whether you recall being asked to contribute to the  
6 information that's being provided here?

7 MR. BALLARD: Object to the form.

8 MR. WILKIN: I'll instruct the witness  
9 not to answer.

10 Q. Let me ask you to turn to the end of the  
11 exhibit, page 2, where -- the very last phrase where it  
12 says the final remedy will be selected -- the last  
13 phrase of the last full paragraph -- that the final  
14 remedy will be selected and designed in accordance with  
15 EPA guidance after completion of the remedial  
16 investigation and feasibility study.

17 My question is: Do you agree that in the  
18 Superfund process that you're undergoing at the San  
19 Jacinto site, that the remedy -- it's intended that the  
20 remedy be selected and designed in accordance with EPA  
21 guidance after completion of the remedial investigation  
22 and feasibility study?

23 MR. BALLARD: Object to the form.

24 A. The final remedy for the entire site, which is  
25 larger than just the TCRA site, will be selected. That

1 is in accordance with EPA guidance.

2 Q. That the final remedy is selected after a  
3 completion of the remedial investigation and feasibility  
4 study. Correct?

5 MR. BALLARD: Same objection, as to form.

6 A. The final remedy is selected through the  
7 process at the end of RI/FS, yes.

8 Q. Let me show you now what's been marked  
9 Exhibit 458.

10 (Exhibit 458 marked.)

11 Q. Can you identify Exhibit 458?

12 A. It's a letter to Albert Axe. It says from  
13 EPA. Charles Faultry signed it. Says found a decision  
14 dispute resolution regarding EPA's decision on the  
15 temporary cover designed for the storm event with a  
16 return period of 100 years for the TCRA.

17 Q. Do you recall having seen Exhibit 458 before  
18 today?

19 A. I don't recall.

20 Q. Let me call your attention to the section  
21 starting on Respondents' Position. The Bates number  
22 ends in 0124. Do you have that, sir? Have you found  
23 where --

24 A. 0124?

25 Q. Yes, sir.

1           A.    Yes, I have that.

2           Q.    Section III under Respondents' position sets  
3 out --

4                   MR. WILKIN:  I'm sorry, John.  I can't  
5 find where you are.

6                   MR. BALLARD:  Can I have a copy of the  
7 document?  I'm sorry.  Is it 458?

8                   MR. MUIR:  Yes.

9                   MR. STANFIELD:  I'm on page 0124.

10                   MR. WILKIN:  They all say 124 on mine.  
11 Look at the page.

12                   MR. STANFIELD:  Yeah, they do.

13                   MR. MUIR:  Yeah, that was a problem with  
14 the MIMC production.

15           Q.    Let's see.  If you go back, it is the fourth  
16 page in the exhibit.  It is numbered page 2 of dispute  
17 resolution-final decision.  Does that help you find the  
18 section labeled Respondents' position?

19           A.    Yes, I'm there.

20           Q.    And then for the next several pages, it has  
21 six numbered, bolded paragraphs and then discussion  
22 beneath them.

23                   I guess my question is whether or not you  
24 can tell me whether what is represented in the document  
25 under Respondents' position on pages 2, 3, 4, 5 is an

1 accurate reflection of MIMC and International Paper's  
2 position on this issue of the 10- versus 100-year flood  
3 return design.

4 MR. BALLARD: Object to the form.

5 MR. WILKIN: I object. It's the same  
6 protracted discussion we just had a second ago. You're  
7 asking him to summarize or comment on six pages of a  
8 document that he didn't author.

9 MR. MUIR: My first question, Counsel, I  
10 think, is simpler than that.

11 Q. Are you familiar with the positions taken by  
12 MIMC and IP in this dispute over the 10-year versus  
13 100-year flood event as being the design for the TCRA?

14 MR. STANFIELD: Objection. Form.

15 A. I didn't know. I didn't write this letter and  
16 I didn't prepare the Respondents' position and I don't  
17 really think I should speak on their behalf.

18 Q. (By Mr. Muir) So are you telling me, then,  
19 that, even if you -- even if you read every word of  
20 this, you're not in the position to say yes, that's  
21 consistent with our position or not, just because that  
22 wasn't -- you weren't particularly involved in it?

23 A. That's correct.

24 Q. Okay. Now, I would like to ask you one  
25 question under page 4, No. 5. And it's near the bottom

1 of that -- of that paragraph under 5. Let me -- maybe I  
2 can point it out here. Where it says Respondents'  
3 calculations, do you see where I'm referring to?

4 A. Yes.

5 Q. Respondents' calculations, the percent chance  
6 of a 100-year flow event occurring in a 100-year design  
7 life of the cover is 63 percent.

8 We looked at the calculations in the prior  
9 exhibit that was submitted, Exhibit 454?

10 A. Right.

11 Q. Those -- those don't include the calculations  
12 for a 100-year flood event in 100 years. Do you know if  
13 at some other point someone from Anchor, your  
14 engineering people, did that calculation out to the  
15 100-year flood occurrence in 100 years?

16 MR. BALLARD: Object to the form.

17 A. I don't know.

18 Q. Sitting here, can you tell me whether that's  
19 accurate, based on the same analysis that was done in  
20 Table 1 of Exhibit 454 if this 63 percent occurrence for  
21 a 100-year flood event over 100 years is accurate?

22 MR. BALLARD: Object form.

23 A. I didn't do the original calculations and I  
24 didn't do this calculation, so I can't respond to that.

25 Q. Okay. Do you agree with the next statement

1     there, that that percentage is too high? 63 percent is  
2     too high of a risk of failure in the long term to be  
3     considered protective of human health and the  
4     environment and in all likelihood would not make a  
5     temporary cover designed for a storm event with a return  
6     event of 100 years a viable long term remedial option?

7                     MR. BALLARD: Object to the form.

8             A.     I don't agree or disagree with the statement.  
9     I'm not even sure what it's trying to say.

10            Q.     Okay. Now, do you recall that, in  
11     implementing the TCRA, that the EPA sent several notice  
12     of violation to MIMC and IP for failure to do work that  
13     met the schedule?

14                    MR. BALLARD: Object to the form.

15            A.     I recall that we had difficulty gaining access  
16     into the site to do work and, as a result, got notices  
17     of violation.

18            Q.     How many notice of violation for failure to  
19     meet the schedule do you recall that were received?

20            A.     I don't recall.

21            Q.     More than one?

22                    MR. BALLARD: Object to the form.

23            A.     Yes.

24            Q.     When, if you recall, was the -- the issue of  
25     access that you were talking about -- when was that



1 resolved?

2 A. Around February of -- I'd have to go back and  
3 look. I know it was February of the year that we  
4 finished the TCRA.

5 Q. Let me -- let me show you what was previously  
6 marked as Exhibit 360 in a prior deposition. Maybe that  
7 will help. In looking at -- here a little -- about  
8 halfway down of the paragraph that says Respondents'  
9 notified EPA that they have secured access as of January  
10 21st, 2010. Does that refresh your recollection as to  
11 when the access issue was settled?

12 MR. BALLARD: Object to form.

13 A. Sorry. Which one are we looking at?

14 Q. Yeah. Let me show you. It's right here.

15 A. January 21st. Yeah.

16 Q. So does that refresh your recollection as to  
17 when the access issue was taken care of?

18 MR. BALLARD: Object to form.

19 A. I'm not sure this is accurate. I think they  
20 mean 2011. That's not accurate. This e-mail is dated  
21 1-28-2011. She's referring to events that happened in  
22 2011, not 2010.

23 Q. Okay. So you think that access would have  
24 been taken care of in January 21st, 2011, as opposed to  
25 2010?

1           A.     That's correct.

2           Q.     Okay.  And it looks like she made a similar  
3     mistake a little further down where it says as of today,  
4     January 27th, 2010.  That should be 2011 as well.  
5     Correct?

6           A.     That's correct.

7                     THE VIDEOGRAPHER:  We're coming up on a  
8     tape change here.  This would be a good time to take a  
9     break?  It's up to you.

10                    MR. MUIR:  Yeah.  If you need to change  
11    the tape, we need to change the tape.

12                    THE VIDEOGRAPHER:  Off the record at  
13    2:57.

14                             (Break taken.)

15                    THE VIDEOGRAPHER:  This begins disk  
16    three.  We're back on the record at 3:11.

17           Q.     Mr. Keith, I want to show you what was marked  
18    previously as Exhibit 359.  Exhibits 359 is a March 3rd,  
19    2011 letter addressed to you.  Correct?

20           A.     Yes.

21           Q.     And it is from Valmichael Leos or someone  
22    signing for Valmichael Leos at EPA?

23           A.     Yes.

24           Q.     Do you recall receiving Exhibit 359?

25           A.     Yes.

1           Q.    On the last page there's, looks like, I guess  
2   an attachment that says failure to comply and stipulated  
3   penalties.  Do you see where I'm referring to?

4           A.    Yes.

5           Q.    This talks about -- Exhibit 359 -- about  
6   additional times after January -- or starting on January  
7   31st, 2011 of failure to comply with the terms of the  
8   administrative order on the TCRA.  Correct?

9                   MR. BALLARD:  Object to the form.

10          A.    Not necessarily with the administrative order,  
11   but for the schedule that EPA had adopted.

12          Q.    Says there was -- EPA approved in writing the  
13   amended work schedule on December 15, 2010, in the  
14   second paragraph.  Is that the work schedule you're  
15   talking about?

16          A.    That's the schedule that they approved, yes.

17          Q.    And it indicates in that third paragraph on  
18   the first page that EPA visited the site the week of  
19   February 7 to 11, 2011 and observed no site work  
20   activities for the waste pits.

21                   That was after the access issue had been  
22   addressed, so do you recall what the reason that at that  
23   time there was no work going on?

24                   MR. STANFIELD:  Objection.  Form.

25          A.    There was work occurring.  The contractor had

1    been on standby because we did not have access, and it  
2    takes a contractor time to get his equipment and  
3    materials.  So during -- the time that we got access to  
4    when we had equipment back on the site, there were a lot  
5    of things that had to happen.  So it's not like you turn  
6    on a light switch and all of a sudden this equipment is  
7    at the site.

8           Q.    Well, let's just look, then, to the bullet  
9    points here starting at the end of page 1.  Says the AOC  
10   schedule requires and then commencement of shaping and  
11   grading of western waste pit for Western Cell  
12   preparation on January 31st, 2011.  Do you see that?

13          A.    Yes.

14          Q.    And then it continues on with three additional  
15   things on the next page?

16          A.    Correct.

17          Q.    And it says these required activities were not  
18   implemented in accordance with the work schedule.

19                   Is that statement correct or not, that  
20   these four required activities were not implemented in  
21   accordance with the work schedule?

22                   MR. STANFIELD:  Objection.  Form.

23          A.    The work schedule that they're referring to  
24   was from a work plan that was completed in November of  
25   2009 or 2010.  EPA approved that work schedule because

1 of the access issues and changes to where lay-down areas  
2 were, equipment access were. We had to develop a new  
3 work plan that was submitted to EPA and approved in  
4 February of 2011, and it required changes to the  
5 schedule because of those issues that were explained to  
6 the EPA. And they did not approve that schedule.

7 The original schedule also had language in  
8 it that said that this schedule is subject to changed  
9 based on equipment availability and contractor  
10 requirements. And it was a conceptual schedule that EPA  
11 adopted somewhat unilaterally.

12 MR. MUIR: Object to the responsiveness.

13 Q. My question was just whether this is a true  
14 statement or not, that the activities that are reflected  
15 in these four bullet points were not implemented in  
16 accordance with work schedule, as that is defined in  
17 Exhibit 359?

18 MR. BALLARD: Objection to form. Asked  
19 and answered.

20 A. That did not occur because we did not have  
21 access.

22 Q. So -- so that statement is true, then, that  
23 those activities didn't occur in accordance with work  
24 schedule.

25 MR. STANFIELD: Objection. Form. Asked

1 and answered.

2 Q. Correct, sir?

3 MR. STANFIELD: Same objection.

4 A. I maintain my original answer.

5 Q. You talked about the -- the work and the  
6 documents, reports, and stuff being a collaborative  
7 effort, which included the EPA, something to that  
8 effect?

9 A. That's correct.

10 Q. And the way the process worked, we talked some  
11 earlier about kind of internally how you circulated  
12 documents and got comment. I want to talk more now  
13 about interaction with the EPA in -- with these reports  
14 and other documents that were created.

15 When you provided a draft document to the  
16 EPA, was it typical then that you would receive comments  
17 back from EPA as to things -- the issues they saw with  
18 the draft that was submitted?

19 A. Yes.

20 Q. And at times were those, the comment,  
21 discussed in kind of a back and forth between you and --  
22 you, I would include Anchor or Integral, and EPA until  
23 some time resolution had been reached on those comments?

24 A. Yes.

25 Q. Other times I've seen charts that appear to

1 have been made up by someone with -- on your side of the  
2 fence, which had list of EPA comments and then responses  
3 to those comments. Do you recall that type of  
4 procedure?

5 A. Yes.

6 Q. Was there -- was there some determining factor  
7 as to when you would make up those charts where you'd  
8 lay everything out on a chart as far as their comments  
9 and your response to their comments?

10 MR. WILKIN: Instruct you not to answer,  
11 to the extent it involves communication among MIMC  
12 and --

13 MR. MUIR: Let me reask it, then, and see  
14 if we can get a . . .

15 Q. Within the Superfund process, was it required  
16 for certain types of reports that you come up with a  
17 formal chart of their -- their comment and your  
18 responses?

19 A. It wasn't required.

20 Q. Okay. So that was something that was done --  
21 a decision that someone and you or the people working  
22 with you decided we'll do it for this one, we done need  
23 to do it for that one?

24 A. We did it to help guide them to where  
25 responses may be to their comments.

1 Q. Now, when you -- when you completed the  
2 removal action -- I guess that's making an assumption --  
3 is the TCRA completed at some point?

4 A. Yes. It was completed ahead of schedule in  
5 July of 2011.

6 Q. Let me show you, then, what I'm going to mark  
7 as Exhibit 459.

8 (Exhibit 459 marked.)

9 Q. Do you recognize Exhibit 459?

10 A. Yes.

11 Q. The title of the document is revised Final  
12 Removal Action Completion Report. Correct?

13 A. That's correct.

14 Q. Okay. And the intent of this report is to  
15 document the completion of the TCRA, as we've been  
16 referring to it earlier. Is that correct?

17 MR. BALLARD: Object to the form.

18 A. Yes.

19 Q. And is -- was -- a removal action completion  
20 report, that was one of the things that was required  
21 under the administrative order. That's something that  
22 typically would be done after one of these was  
23 completed. Correct?

24 MR. BALLARD: Object to the form.

25 A. I'd have to go back to the order.



1           Q.    Okay.  Would it be typical in the Superfund  
2 process after completing a removal action to do a report  
3 like this documenting its completion?

4           A.    Yes.

5           Q.    Did Anchor and -- and/or Integral complete  
6 this Revised Final Removal Action Completion Report?

7           A.    I don't think that we did write this  
8 particular version.

9           Q.    Did -- did you work on a draft of a completion  
10 report for the TCRA?

11          A.    Yes.

12          Q.    And notice, unlike the other documents we were  
13 reviewing earlier, this does not bear either Anchor or  
14 Integral's name as having submitted it.  Is that because  
15 the EPA completed this document?

16          A.    They wrote this version, yes, or completed  
17 this version.

18          Q.    And why did -- why was this version completed  
19 by the EPA?

20          A.    They had comments that they provided us.  We  
21 tried, to the best of our ability, to incorporate their  
22 comments.  There were some that we did not agree with,  
23 and they completed the body of their report.

24          Q.    Well, what -- what comments -- isn't it true,  
25 sir, that the EPA objected to a characterization of this

1 this TCRA as being final, a final remedy?

2 MR. BALLARD: Object to the form.

3 A. I don't think that had anything to do with  
4 this document.

5 Q. What's your understanding as to the comments  
6 that EPA made that you didn't incorporate into your  
7 version requiring EPA to complete this themselves?

8 MR. STANFIELD: Objection. Form.

9 A. I'd have to go back and look at all the  
10 comments we got from EPA. I don't remember them.

11 Q. So is it unusual, in your experience on  
12 Superfund sites, for EPA to take over completion of a  
13 report such as this?

14 MR. STANFIELD: Objection. Form.

15 MR. BALLARD: Objection. Form.

16 A. Yeah, that's probably a legal question, wider  
17 ranging experience than I have.

18 Q. Okay. Let me ask you, then: On your  
19 experience on Superfund sites that you've been involved  
20 with, can you cite me to another example of the EPA  
21 taking over and completing a report like this because  
22 the respondents would not adopt the comments that EPA  
23 asked to be put in the report?

24 MR. BALLARD: Object to the form.

25 A. I have been involved in one other site where

1     that has occurred.

2           Q.     Which site was that?

3           A.     I don't really know that I can go into those  
4     kind of details.  I'm sure it's covered under a  
5     confidentiality agreement with the clients.

6           Q.     And so without going back and looking in your  
7     files, you don't -- you can't tell me what -- what the  
8     reasons were or what the comments were that -- that you  
9     didn't adopt which caused the EPA to take over the  
10    completion of this?

11                   MR. BALLARD:  Object to form.

12           A.     That's -- that's correct.

13           Q.     So -- but it's your testimony that -- that it  
14    wasn't a problem with the draft final removal report  
15    describing the work as a permanent remedy for the site?

16           A.     I don't recall that.

17           Q.     So you don't recall refusing to refer to this  
18    TCRA as a temporary remedy?

19                   MR. STANFIELD:  Objection.  Form.

20           A.     Repeat the question.

21           Q.     Yeah.  Is it -- is it your testimony that --  
22    well, let me ask:  In the version of this completion  
23    report that was prepared by Anchor and Integral -- let  
24    me ask you first:  Were both companies involved with it?

25           A.     Just Anchor.

1           Q.     Just Anchor.  Okay.  So in -- who, within  
2     Anchor, if anyone, was responsible for the -- for the  
3     first draft of this?

4           A.     It was the entire engineering team that worked  
5     on the TCRA, and myself.

6           Q.     Okay.  Do you recall that draft report  
7     submitted to the EPA as describing the -- the work as a  
8     permanent remedy?

9           A.     I don't recall that.

10          Q.     And sitting here today, you just can't recall  
11     what it was that the parties wouldn't incorporate, what  
12     EPA comments it was that the parties wouldn't  
13     incorporate?

14                         MR. BALLARD:  Objection to form.

15          A.     That's right.  Sitting here today, I'd have to  
16     go back and look at that document and see what changes  
17     were made.

18          Q.     Do you know if IP and MIMC ever provided a  
19     draft of the report indicating they believe that the  
20     TCRA remedy was final?

21                         MR. BALLARD:  Object to the form.

22          A.     I don't recall that.

23          Q.     Is there anyone at Anchor who would be more  
24     likely to know about the specifics of the draft report  
25     than you would?a?

1 MR. BALLARD: Object to form.

2 MR. WILKIN: Objection. Form.

3 A. No, not that I know of.

4 Q. There were -- since the completion of the cap,  
5 there have been some problems with the cap itself,  
6 haven't there?

7 MR. BALLARD: Objection. Form.

8 MR. STANFIELD: Objection. Form.

9 MR. WILKIN: Objection. Form.

10 A. There's been ongoing maintenance of the cap,  
11 and that was identified in the operations maintenance  
12 and monitoring plan for the cap that's part of the  
13 removal action completion report and the removal action  
14 work plan.

15 Q. Let's look at what I'm going to mark as  
16 Exhibit 460.

17 (Exhibit 460 marked.)

18 Q. Exhibit 460 is a letter from Valmichael Leos  
19 addressed to you. Correct, sir?

20 A. That's correct.

21 Q. Dated July 31st, 2012?

22 A. Yes.

23 Q. And Mr. Leos indicates that he observed  
24 several bulging areas along the western berm of the cap.  
25 Do you recall discussions with Mr. Leos about issues

1 with bulging areas along the western berm?

2 A. Yes.

3 Q. He also indicates that from his inspection  
4 there are areas where the geotextile fabric was left  
5 exposed without armor cap material present. Do you  
6 recall that as also being an issue that was discussed?

7 MR. BALLARD: Object to the form.

8 A. We identified this prior to Mr. Leos's site  
9 visit. So yes, I remember that.

10 Q. And he indicates, to close that first  
11 paragraph, that taken together, the bulging and exposed  
12 geotextile fabric have raised significant concerns  
13 regarding the western berm structural stability as well  
14 as the overall effectiveness and design of the armor  
15 cap.

16 Do you recall him expressing his concerns  
17 about the structural stability and the overall  
18 effectiveness of the design of the cap?

19 MR. BALLARD: Object to the form.

20 A. I remember receiving this letter.

21 Q. Do you recall having any other discussions  
22 with Mr. Leos about this subject?

23 A. We had discussions about this discussion, yes.

24 Q. In July of 2012, did you share his significant  
25 concerns regarding the structural stability and the

1 overall effectiveness and design of the armor cap?

2 MR. BALLARD: Object to form.

3 A. I did not share those concerns. We had  
4 planned for this type of issue in the site operations  
5 monitoring and maintenance plan, and it was a  
6 maintenance event that was -- had materials nearby to  
7 resolve the issue very quickly.

8 Q. What, if you can tell me, caused the issues  
9 that are identified here?

10 A. The primary thing is that there was some minor  
11 displacement of finer grain materials on this berm  
12 that's about a foot or two high, and some of the larger  
13 cap materials slid down over a very small area.

14 Q. Was that event caused by anything in  
15 particular? For instance, was there a significant storm  
16 event or something else that caused it, that you can  
17 identify?

18 A. Nobody was at the site. It was found during a  
19 monitoring event that was planned.

20 Q. So there wasn't any specific event identified  
21 as this being the cause of that problem?

22 A. That's correct.

23 Q. Is it your understanding that the issues  
24 addressed in Exhibit 460 had been taken care of with the  
25 county?

1           A.     Yes.

2           Q.     Let me show you what we'll mark as  
3 Exhibit 461.

4                     (Exhibit 461 marked.)

5           Q.     Again, this is a letter from Valmichael Leos  
6 addressed to you.  Correct?

7           A.     That's correct.

8           Q.     And it indicates that he had received -- it's  
9 also about the repair of the TCRA cap -- correct? -- the  
10 subject of the letter?

11          A.     He's asking us questions about the armor cap  
12 and western berm specifically.

13          Q.     Okay.  There is a reference in the first  
14 paragraph to him having received a letter from you dated  
15 September 18, 2012.  Do you recall writing that letter?

16          A.     I'm sure I did.  I don't recall it.

17          Q.     And then he says, "I disagree with your  
18 characterization of several statements in my July 31st,  
19 2012, letter."  Now, is the July 31st, 2012 letter he's  
20 talking about Exhibit 460 that we were looking at?

21                     MR. BALLARD:  Object to form.

22          A.     I can't say for sure.  The dates line up.

23          Q.     Well, let's look at the next part of that  
24 paragraph.  It says, "However, I understand that your  
25 September 18 letter contains the positions of the



1 Respondents McGinnes Industrial Maintenance Corporation  
2 and International Paper Company related to the necessity  
3 for cap repair on the western berm."

4 Does that help you at all as to whether or  
5 not these are all -- these were related to the --

6 A. They're related, yes.

7 Q. What does he mean, do you know, when he says,  
8 however, I understand that your September 18 letter  
9 contains the positions of the respondents --

10 MR. STANFIELD: Objection. Form.

11 MR. BALLARD: Objection. Form.

12 Q. -- related to the necessity for cap repair?

13 MR. STANFIELD: Objection. Form.

14 MR. BALLARD: Same objection.

15 A. I don't know what Valmichael means.

16 Q. Did the letter that you sent dated September  
17 18, 2012 not reflect your own personal position?

18 MR. BALLARD: Object to form.

19 A. I don't remember the letter, number one. So I  
20 can't really respond to that question.

21 Q. Now, he goes on in the second paragraph to say  
22 it's EPA's primary concern to ensure the integrity of  
23 the site cap, principally by conducting a third-party  
24 (U.S. Corp of Engineers) review of the armor cap design  
25 and construction.

1                   Do you recall discussing with Mr. Leos  
2 this third-party review by the Corps of Engineers?

3           A.    Yes.

4           Q.    What do you recall about -- about that  
5 subject?

6           A.    They completed -- we worked with EPA and with  
7 the Corps to help them complete their review and answer  
8 questions that came up during that review.

9           Q.    And was a written report completed with  
10 respect to that review?

11          A.    Yes.

12          Q.    And as you noted earlier, Mr. Leos also  
13 directs a number of questions on an enclosure to you.  
14 Do you recall having responded to those?

15          A.    Yes, we did.

16          Q.    Other than the maintenance event reflected in  
17 these letters of July 31st and October 10th, have there  
18 been other circumstances since completion of the cap  
19 in -- I think you said May of 2011?

20          A.    July.

21          Q.    July of 2011? So since that completion, have  
22 there been other circumstances where repairs have had to  
23 be done on the cap?

24          A.    There were other maintenance events that have  
25 occurred. They weren't specifically repairs. They

1     were, basically, to enhance the cap.

2           Q.     Were those done at your initiation or on  
3     request of EPA, or how did those come about? Or was  
4     there a scheduled maintenance that was done?

5           A.     They were -- one was done after a quarterly  
6     inspection. During an extremely low tide, we could see  
7     some areas that just looked like they needed a little  
8     more armoring material over very specific small areas  
9     that were normally submerged. So we took advantage of  
10    the tidal conditions and used the rock that was  
11    stockpiled nearby to make those enhancements.

12                   The other one was one of the  
13    recommendations that came out of the Corps review, and  
14    one of their comments was to further enhance the cap,  
15    the structural stability of the cap, above -- they  
16    didn't disagree that it had been designed as called for.  
17    They thought we could enhance it further by decreasing  
18    the slopes on some of the berms to five to one.

19           Q.     I'm sorry. I didn't --

20           A.     I mean 3 to 1. Excuse me.

21           Q.     I'm sorry. I didn't catch part of your  
22    answer. Did you say they did or didn't agree that it  
23    had been constructed in compliance with the plans?

24           A.     They did not disagree that -- they agreed that  
25    it had been constructed -- designed and constructed --

1 Q. Okay.

2 A. -- in accordance with the design criteria.  
3 They just thought we could do some things to enhance it.

4 Q. Okay. I want you to take a quick look at  
5 Exhibit 459 on page 12 where it says chronology of  
6 significant construction events.

7 A. Page 12?

8 Q. Yes. Numbered page 12 on the report itself.

9 A. Okay.

10 Q. And Section 4 is entitled Chronology Of  
11 Significant Construction Events. And that continues on  
12 to page 13 and the top of page 14. I just wanted you to  
13 read through this, take a look, and tell me if you  
14 disagreed with any of the statements regarding the  
15 construction events reflected here.

16 A. The main thing that I would disagree with or  
17 that I think is a omission is that, even though EPA  
18 approved the Final Removal Action Work Plan, that work  
19 plan had to be revised significantly because of the  
20 access issues associated with the site. And the actual  
21 final removal work plan wasn't approved until February  
22 2011, and that's not reflected in here.

23 The construction that occurred looks  
24 reasonably accurate. I'd have to go back to the daily  
25 reports and monthly reports to make sure of that, but

1 the primary omission is that there was a second work  
2 plan with a second schedule that's not reflected in this  
3 chronology of construction events.

4 Q. Well, is the original work plan -- is that  
5 reflected in this chronology of significant construction  
6 events?

7 A. The original November 8th, yes.

8 Q. Okay. So -- but other than that, just sitting  
9 here taking a look, you don't see anything else that is  
10 a -- you think is a glaring mistake?

11 A. I think that's a pretty glaring mistake. But  
12 other than that, no.

13 Q. Okay. Let me show you what is marked as  
14 Exhibit 462.

15 (Exhibit 462 marked.)

16 Q. Can you identify picture 462 for us, sir?

17 A. It's the draft feasibility study report for  
18 the San Jacinto site.

19 Q. In your own words, what do you consider to be  
20 the purpose of the draft feasibility study report?

21 A. It's a develop and review remedial  
22 alternatives for the site.

23 Q. And from the feasibility study is a remedy  
24 selected then from the alternatives? Is that the  
25 typical way it works?

1           A.    I don't know if there's a typical way EPA  
2 makes a final determination on what the selected remedy  
3 may be. They aren't necessarily confined to what's in  
4 the feasibility study report.

5           Q.    Exhibit 462 is dated August 2013. Correct?

6           A.    Yes.

7           Q.    And after you provided that, the EPA provided  
8 comments on that draft. Correct?

9           A.    That's correct. Let's look, then, at what  
10 we're going to mark Exhibit 463.

11                   (Exhibit 463 marked.)

12                   MR. WILKIN: And before we move on, of  
13 course, this one -- 462 doesn't include all the  
14 appendices and everything. Right?

15                   MR. MUIR: Yeah.

16           Q.    Exhibit 462 is a draft feasibility study  
17 report up through the references before the tables and  
18 appendices, the entire second volume of appendices.  
19 Right?

20           A.    It's the main text of the document, yes.

21           Q.    Okay. Thanks. Let's now look at Exhibit 463.  
22 And first, I'd like you to identify Exhibit 463 for us.

23           A.    It's a letter from Gary Miller signed for Gary  
24 by Charles Faultry. Provides enclosed comments on the  
25 draft feasibility study.

1 Q. So these -- and if you go to the next page, it  
2 says comments, draft feasibility study report dated  
3 August 2013. So are these, then, the comments that you  
4 received back from the EPA with regard to the document  
5 that we've marked as Exhibit 462?

6 A. Yes.

7 Q. Looking at the comments -- and they are  
8 numbered here. So looking at No. 1, it says General,  
9 the FS -- and that's the feasibility study. Correct?

10 A. That's correct.

11 Q. Okay. -- shall include a detailed discussion  
12 of all problems noted with the TCRA cap and corrective  
13 actions performed to date or planned. Also, this  
14 discussion shall include the issue/recommendations  
15 identified in the U.S. Army Corps of Engineers' cap  
16 assessment.

17 Now, was there a reason why this  
18 discussion of the problems with the TCRA cap and the  
19 issues and recommendations identified by the Corps of  
20 Engineers' assessment was not included in the August  
21 2013 draft of the report?

22 MR. STANFIELD: Objection. Form.

23 A. I'm not sure it wasn't included in the August  
24 2013. I think they're asking for a detailed discussion.  
25 I'd have to go back and review the August 2013 report to

1 see what we did or did not discuss.

2 Q. Let's look at No. 2, again under General. And  
3 just to kind of put this in context, most of these first  
4 few pages, they marked the comments as general.  
5 Correct?

6 A. Yes.

7 Q. And then starting back on page -- it looks  
8 like page 4, they start references to specific sections  
9 or, you know, information in specific sections of the  
10 report itself. Is that correct?

11 A. Yes.

12 Q. Was that -- is that typical of the way you  
13 would get comments? Some of them addressed generally to  
14 the report and others very specifically to specific  
15 sections of the report?

16 A. I think it sort of varied document by  
17 document.

18 Q. Okay. Let's look at general comment No. 2.  
19 "Statements regarding a recommended or preferred  
20 remedial alternative shall be deleted from the FS. The  
21 EPA will recommend a preferred alternative in the  
22 Proposed Plan for public comment, and will select a  
23 final remedial action for the site in the Record of  
24 Decision based on an evaluation of the CERCLA criteria  
25 after considering public comment."



1                   So is it -- is it usual in a feasibility  
2 study report, in your practice, to include statements  
3 regarding recommended or preferred alternatives?

4                   MR. STANFIELD: Objection. Form.

5           A.     It's not unusual.

6           Q.     Do you recall what alternative or alternatives  
7 that you recommended be taken in the August 2013  
8 feasibility study?

9                   MR. WILKIN: Instruct the witness not to  
10 answer beyond that.

11          A.     Yes.

12          Q.     What -- which of the remedial alternatives did  
13 the August 2013 report recommend as preferred?

14                   THE WITNESS: Are you okay?

15          Q.     Asking what the report says.

16                   MR. WILKIN: You're asking what's in 462?

17                   MR. MUIR: Yes.

18                   MR. WILKIN: Okay. You want him to read  
19 462 and tell you --

20                   MR. MUIR: He said he knew which ones  
21 were preferred, so I'm asking what the answer to that  
22 question is, which ones it was.

23          A.     In the executive summary of Exhibit 462, we  
24 say the Alternative 3 is a preferred alternative.

25          Q.     And what -- give us, basically, what

1 Alternative 3 is, as reflected in the August 2013  
2 feasibility study?

3 MR. BALLARD: Object to form.

4 MR. STANFIELD: Objection. Form.

5 A. I guess we should open up the document and --

6 Q. You have the document in front of you. Right?

7 A. Right.

8 Q. Okay. On page 51, there's 5.3, Alternative 3,  
9 permanent cap, institutional controls, and monitored  
10 natural recovery?

11 A. Correct.

12 Q. So is that shorthand for this was the  
13 alternative that was being recommended. Correct?

14 MR. BALLARD: Object to the form.

15 A. Alternative 3 was the recommended alternative.

16 Q. The estimated cost for Alternative 3 was \$2.9  
17 million -- is that correct? -- according to Section 6.6,  
18 cost on page 73?

19 A. That's correct. That excludes the costs spent  
20 to date.

21 Q. The costs reflected in Section 6.6 on page 73  
22 of Exhibit 462, all of those listed there exclude past  
23 costs. Correct?

24 A. That's correct.

25 Q. Okay. So these are -- it's kind of an apples

1 to apples as far as we're talking about what the future  
2 costs of implementing these remedies -- estimated costs  
3 would be for each?

4 A. That's correct.

5 Q. Okay. Who decided to recommend Alternative 3  
6 to the EPA in the August 2013 feasibility study?

7 MR. WILKIN: I'll instruct the witness  
8 not to answer.

9 Q. The next general comment, No. 3, says, "The FS  
10 Report shall include an additional remedial alternative  
11 for the northern waste pits."

12 A. Which one are you on?

13 Q. No. 3 in the comments.

14 A. Okay.

15 Q. Do you have -- are you with me?

16 A. Yes.

17 Q. "The FS Report shall include an additional  
18 remedial action alternative for the northern waste pits.  
19 This new alternative shall evaluate a removal that  
20 addresses a volume of material that contains  
21 dioxin/furan at levels greater than 220 ng/kg . . ."  
22 That's nanograms over kilograms -- per kilogram?

23 A. Yes.

24 Q. ". . . Except where the water depth is greater  
25 than 2 feet." In the original -- the August 2013

1 report, is it true that, with respect to the northern  
2 waste pits, there were no proposed alternatives where  
3 materials were -- would be removed?

4 A. No, that's not correct.

5 Q. Okay. Looking at No. 4, "The FS Report shall  
6 consider the potential for erosion and releases of  
7 contaminated material due to major storm of each of the  
8 alternatives, and the relative impact should such a  
9 release occur."

10 Let me ask you: Is there a reason why the  
11 August 2013 feasibility study report didn't include  
12 something considering the potential for erosion and  
13 releases due to a major storm?

14 MR. BALLARD: Object to the form.

15 A. It does include that. I'm not sure what  
16 specifically this comment refers to, but the August 2000  
17 [sic] report does address those issues. The revised  
18 report may go into more detail, but it does.

19 Q. So you think the EPA was just wrong on this  
20 when they -- with respect to this comment?

21 MR. STANFIELD: Objection to form.

22 A. There was a lot of clarification on all of  
23 these comments that we worked with EPA on after we  
24 received them to get clarification on those and made the  
25 changes that they requested and modified the text as

1 they requested.

2 Q. Looking, then, at No. 7 under General, "The FS  
3 Report only considers institutional controls for the  
4 Southern Impoundment area. The FS shall include a range  
5 of alternatives for this area similar to the range of  
6 alternatives in the northern waste pits, including  
7 treatment and/or removal."

8 So is it true that the August 2013  
9 feasibility study did not include any removal options  
10 for the southern impoundment area?

11 MR. BALLARD: Object to form.

12 MR. STANFIELD: I'm going to object to  
13 the form, and I'm going to instruct the witness not to  
14 answer, as this addresses the southern impoundments,  
15 which the County is expressly removed from the suit.  
16 And the Court has ruled it's not the subject of  
17 discovery in this case.

18 Q. I assume you're going to comply with counsel's  
19 instruction?

20 A. Yes.

21 Q. Okay. After you received the January 15, 2014  
22 comments from EPA, did you receive further written  
23 comments from EPA on the August 2013 feasibility study?

24 A. Yes.

25 Q. Do you recall when those -- approximately when

1 those were received?

2 A. I don't recall. They were not as formal as  
3 these. They were e-mail exchanges with Gary Miller.  
4 Some of them related to clarification. Some of them new  
5 comments. Some he actually redacted, removed from this  
6 set of comments.

7 Q. Let's look back on some of the more specific  
8 comments. On page 4, look at paragraph -- numbered  
9 Comment 26, and it is referring to the executive  
10 summary, page ES-3. And it states that "Statements that  
11 there are no increased long-term benefits for  
12 Alternatives 4, 5 and 6 shall be deleted."

13 Now, do you recall specifically where  
14 there were statements in the August 2013 feasibility  
15 study that indicated that there were no increased  
16 long-term benefits for those three alternatives?

17 MR. BALLARD: Object to form.

18 A. Generally, those alternatives involve  
19 disturbance of the cap and disturbance of the materials  
20 beneath the cap. And in our experience and Corps of  
21 Engineer experience and EPA experience is when you do  
22 that you resuspend materials that were once stable into  
23 the environment. And we did not see that as a long-term  
24 benefit.

25 Q. Okay. Well, let's look at this next sentence,

1 then, in that section. "As noted in the previous  
2 comment, these alternatives result in a reduction of  
3 volume or mobility, and include treatment or  
4 removal/disposal, which are important considerations for  
5 long-term permanence."

6 Do you disagree with the EPA's statement  
7 there with regard to those alternatives?

8 MR. BALLARD: Object to the form.

9 A. I don't agree or disagree with EPA's  
10 statement. I would say that EPA's own documents point  
11 out that removal is not always the best alternative.

12 Q. Can you point me to any EPA documents where  
13 they've stated that removal is not the best alternative  
14 in this case?

15 A. Not in this case.

16 MR. BALLARD: I didn't get to chance to  
17 object to the form of that last question.

18 Q. And similarly, it goes on to say that  
19 statements in Alternatives 4, 5, and 6 provide less  
20 environmental benefit, and reduction of risk shall be  
21 deleted.

22 So did -- do you know why those statements  
23 in Alternatives 4, 5, and 6 were included in the August  
24 2013 feasibility study?

25 A. I'm sorry. Which comment are we on?

1           Q.     Still on 26. The one talking about the  
2 treatment or removal/disposal. Similar statements that  
3 Alternatives 4, 5, and 6 provide less environmental  
4 benefit and reduction of risk shall be deleted.

5           A.     Uh-huh.

6           Q.     Was -- were the statements in the August 2013  
7 feasibility study that Alternatives 4, 5, and 6 provide  
8 less environmental benefit and reduction of risk part of  
9 the overall plan to -- to recommend Alternative 3, which  
10 didn't include removal and disposal?

11                   MR. WILKIN: Objection. Form.

12                   MR. STANFIELD: Objection. Form. Don't  
13 answer that question.

14                   MR. WILKIN: Same instruction.

15           Q.     Going on to paragraph 27 -- Comment 27,  
16 executive summary page ES-3, it says this section  
17 describes the drawbacks to Alternatives 4, 5, and 6 but  
18 does not discuss their benefits.

19                   Isn't the purpose of a feasibility study  
20 to provide both the pros and cons, benefits and  
21 drawbacks, of the alternatives so they can be fairly  
22 evaluated?

23                   MR. WILKIN: Object to form.

24                   MR. AXE: You can read this, if you need  
25 to.



1           A.    I think we did that.

2           Q.    So you would agree, though, that the purpose  
3 of the feasibility study is to provide both benefit and  
4 potential detriment for the different alternatives so  
5 they can be fairly evaluated?

6                   MR. BALLARD:  Objection.  Form.

7           A.    As described in the report under the  
8 comparison -- comparative analysis of remedial  
9 alternatives in Section 6, we basically go through NCP  
10 criteria and try to develop what the pros and cons are  
11 for each alternative.

12          Q.    Okay.  So let me make sure I understand your  
13 testimony, then.  You would agree that the intent of the  
14 feasibility study is to go through the alternatives,  
15 both pro and con, for all of the alternatives, not just  
16 the preferred alternative?

17                   MR. BALLARD:  Object to the form.

18                   MR. WILKIN:  Objection.  Form.

19          A.    I agree with that.

20          Q.    It's supposed to be an objective document, not  
21 an advocacy document?

22          A.    Yes.

23          Q.    Were there any comments from the EPA with  
24 respect to the August 30th, 2013 draft feasibility study  
25 that you didn't either incorporate or otherwise resolve

1 with the EPA before the March 2014 feasibility study was  
2 released?

3 A. No.

4 Q. So you didn't have -- there weren't any  
5 issues, like, with a revised time removal action  
6 completion report, where you were unable or unwilling to  
7 incorporate the comments from EPA --

8 MR. BALLARD: Objection to the form.

9 MR. WILKIN: Form.

10 Q. -- on the feasibility study?

11 MR. BALLARD: Object to the form.

12 A. We submitted the final feasibility study and  
13 have not heard that they're dissatisfied with it. I  
14 should clarify it was in their language draft interim  
15 final feasibility study.

16 Q. Okay. Since you mentioned it, let's go ahead  
17 and take a look at Exhibit 464.

18 (Exhibit 464 marked)

19 THE VIDEOGRAPHER: Off the record at  
20 4:15.

21 (Break taken.)

22 THE VIDEOGRAPHER: This begins disk four.  
23 We're back on the record at 4:32.

24 Q. All right. Mr. Keith, let's take a look at  
25 Exhibit 464. First question is just going to be for you

1 to identify that for us.

2 A. It's the draft interim feasibility study  
3 report for the site.

4 Q. This one dated March 2014?

5 A. That's correct.

6 Q. So this was the document that was filed -- in  
7 keeping with the point earlier, this document also just  
8 goes up through the references. It does not include  
9 tables and appendices. Correct?

10 A. That's correct.

11 Q. Okay. Now -- so this is the exhibit -- 464 is  
12 the result of having taken the August report, receiving  
13 comments from EPA, and reworking it; and this was the  
14 result that came out after that. Correct?

15 A. That's correct.

16 Q. Okay. I had a few questions for  
17 clarification. If you would turn back to page 48, it's  
18 talking about remedial alternatives for area north of  
19 I-10. And it has some designated Alternative 1N in  
20 Section 4.3.1, Alternative 2N in 4.3.2, and so on.

21 Those 1N, 2N, do those correspond with  
22 remedial action Alternatives 1, 2, and 3, and so on, in  
23 the August 2013 report?

24 A. Let me look real quick.

25 Q. Sure.

1           A.     So Alternative 1 -- and these alternatives may  
2     have changed slightly between versions.  Alternative 1  
3     and 1N are generally consistent.

4           Q.     Okay.

5           A.     Alternative 2 and -- Alternative 2 and 2N are  
6     consistent.  Alternative 3 and 3N are generally  
7     consistent.

8           Q.     Let me stop you right there.

9           A.     They do change.

10          Q.     Okay.  I want to -- that's why I want to ask  
11     you a few questions about these three that you said are  
12     generally consistent.  I notice in this report the cost  
13     associated with these --

14                   MR. WILKIN:  Which one is "this"?

15                   MR. MUIR:  Just a second, Counsel.  Let  
16     me finish my question, and I'll try to make it clear.

17          Q.     Looking at, for instance, Alternative 1N in  
18     the 2014 report, it states the estimated cost of this  
19     alternative is 9.5 million there on page 49.  Okay?

20          A.     Uh-huh.

21          Q.     Similarly, if you look back on page 52, it's  
22     the cost for Alternative 3N is 12.5 million.

23          A.     For Alternative 3N?

24          Q.     Yes, sir.

25          A.     Okay.

1           Q.    When we looked at the cost, for instance, of  
2   Alternative 3 in the September -- or the August 2013  
3   report, it was somewhere in the neighborhood of 2.9  
4   million. My question is: Do these numbers that are in  
5   the March 2014 report, do these include past costs when  
6   you're looking at these alternatives, where the other  
7   one didn't? Or has there been a great increase in the  
8   estimated costs of carrying out the future work for  
9   these three alternatives?

10          A.    Yeah, it was recognized that these  
11   alternatives include the existing armor cap and,  
12   therefore, in the previous report those costs should  
13   have been included in description of those alternatives.  
14   So they include past costs for the construction of the  
15   armor cap, if the armor cap is part of that remedy.

16          Q.    Okay. All right. I'm sorry. We were going  
17   through -- we're now at Alternative 4 and 4N. If you  
18   could continue and let me know whether these are still  
19   consistent or if there are changes.

20          A.    Alternative 4 and 4N are generally consistent.

21          Q.    Does the cost estimate for Alternative 4N  
22   include costs associated with -- the past costs  
23   associated with the cap?

24          A.    Yes.

25          Q.    Thank you. Go ahead, and let's look at 5 and

1 5N. And I notice here we have a 5AN as well, so that  
2 may need some explanation.

3 A. So Alternative 5N and Alternative 5 are  
4 generally consistent. Alternative 5AN was a new  
5 alternative that was in response to one of EPA's  
6 questions that we actually reviewed earlier, although  
7 they changed that response -- or that comment several  
8 times during the course of our development of  
9 alternatives with them. And this is the alternative  
10 that they landed on as they would like to see included  
11 in the -- in this revised report.

12 Q. That was back when we were looking at the  
13 comments in Exhibit 463 the one about removal at the  
14 levels greater than 220 nanograms per kilogram?

15 A. In less than 2 feet of water.

16 Q. In less than 2 feet of water. Okay. All  
17 right. So that's a -- 5AN is a new one. And what about  
18 6N and 6?

19 A. Those two are generally consistent.

20 Q. So with respect to the costs, in Alternatives  
21 5N, 5AN, do those, the cost estimates provided in  
22 Exhibit 464, include past costs related to the cap?

23 A. If the cap is included as part of the  
24 alternative, yes, they were. And in both of those  
25 cases, the cap was included as part of the final

1     remedy -- or final alternative.

2           Q.     Okay.  So the past costs associated with the  
3     cap are included in the costs reflected for those  
4     remedies?

5           A.     Yes.

6           Q.     Okay.  Then what about 6?  Does that cost  
7     take -- estimate take into account the past costs for  
8     construction of the cap?

9           A.     I'd have to go back and look at the appendix  
10    that summarizes those costs because it doesn't include  
11    the cap.  At the end of the day, I don't remember if we  
12    include those costs or not.

13          Q.     I noticed, in looking at that, there -- it  
14    says the costs of this alternative and gives the  
15    approximate cost and then references Appendix C.  Would  
16    Appendix C tell us more of a breakdown of where those  
17    costs came from?

18          A.     Yes.

19          Q.     Okay.  Thank you.  In your work on the San  
20    Jacinto site, have you had any discussions with any of  
21    the defendants' experts, any of the people that have  
22    been named as expert witnesses in this case?

23          A.     No.

24          Q.     Have you reviewed any of the reports of any of  
25    the defendants' experts in this case?

1           A.     Yes.

2           Q.     Do you recall whose reports you've reviewed?

3                   MR. STANFIELD:  Do not answer that  
4 question.

5                   MR. WILKIN:  Same instruction.

6                   MR. MUIR:  You're instructing him not to  
7 answer if he recalls who he reviewed?

8                   MR. STANFIELD:  Yes.

9                   MR. MUIR:  Okay.

10          Q.     Did you provide any comments to any of  
11 plaintiffs' experts' reports that you reviewed?

12                   MR. STANFIELD:  Same instruction.  Same  
13 instruction.

14                   MR. WILKIN:  Same instruction.

15          Q.     Have you reviewed any of the reports for the  
16 defendants' experts in this case?

17                   MR. STANFIELD:  Same objection.  Same  
18 instruction.

19                   MR. WILKIN:  Same instruction.

20          Q.     Have you provided any information to any of  
21 the plaintiffs' experts that have been designated in  
22 this case?

23          A.     I have not.

24          Q.     Has anyone in connection with Anchor provided  
25 any information to any of the experts in this case?



1           A.     No.

2           Q.     I'm sorry if I asked.  Have you had any  
3     discussions with any of the plaintiffs' experts  
4     regarding this case or their opinions in the case?

5           A.     No.

6           Q.     We talked earlier, and I believe you said that  
7     the intent of the feasibility studies that you provided  
8     was to provide an unbiased look at the alternatives that  
9     were included in those reports.  I want to ask you:  
10    With regard to information that you provided to the  
11    public with regard to the work at the site, is it your  
12    understanding that you were to provide unbiased, neutral  
13    information with regard to the work at the site in terms  
14    of your interaction with the public?

15          A.     Yes.

16                   MR. BALLARD:  Objection.  Form.  Sorry.

17          Q.     And would you agree with me, then, that it is  
18    not your -- it's not part of your job at the San Jacinto  
19    site to be an advocate for Waste or MIMC or  
20    International Paper and their preferred objectives at  
21    the site?

22                   MR. BALLARD:  Object to the form.

23          A.     Our job is to provide an unbiased analysis of  
24    site conditions and make recommendations based on that  
25    condition.

1           Q.    And to you, is it true, then, that you would  
2   consider that to be inconsistent, providing this  
3   unbiased approach -- it would be inconsistent with being  
4   an advocate for one alternative over the other  
5   alternative --

6                   MR. BALLARD:  Objection.  Form.

7           Q.    -- as far as the recommended cleanup at the  
8   site?

9                   MR. BALLARD:  Same.

10          A.    Okay.  Our job is to review the NCP criteria  
11   that you use in a feasibility study and objectively  
12   evaluate which alternative meets those criteria the  
13   best, or which alternatives meet those criterion the  
14   best.

15          Q.    We talked about some of the data that had been  
16   collected in earlier studies in the area of the site  
17   some this morning, I believe.  And I believe you said  
18   you had reviewed some of that data.  Is that correct?

19          A.    Yes.

20          Q.    Did you utilize any of the data that had been  
21   collected in the area of the site in any of your work on  
22   the San Jacinto site?

23          A.    The historical data?

24          Q.    Yes, sir.  Data from other sampling events  
25   prior to the time that you became involved.

1           A.    Yes.

2           Q.    Can you tell me in what -- what respects that  
3 prior data was used?

4           A.    I'd have to go back to the specific report,  
5 but I think some of it was used to evaluate model --  
6 calibration model results for some of the sediment  
7 transport work that we did.

8           Q.    Are you familiar with the chemicals of  
9 potential concern technical memorandum that was produced  
10 for the site?

11          A.    Yes.  That was an Integral document, I  
12 believe.

13          Q.    Did you have any involvement in the creation  
14 of that document?

15          A.    Not really.

16          Q.    Were you aware that in that case the sediment  
17 data from the 2005 collected by the TCEQ was not used as  
18 part of the baseline risk assessment?

19          A.    I was aware that it was not used as the part  
20 of the baseline risk assessment, yes.

21          Q.    Did you have any part in the decision that  
22 that data not be used?

23          A.    No.

24          Q.    Let me show you now what was previously marked  
25 in Mr. Slowiak's deposition as Exhibit 4 to that

1 deposition. Are you familiar with the document that was  
2 Slowiak Exhibit 4?

3 A. I am familiar with it, but this also doesn't  
4 contain the complete document. Looks like it's the main  
5 text.

6 Q. Right. I agree with you. And this Exhibit 4  
7 was a document that was prepared by Anchor, it indicates  
8 on the cover page. Correct?

9 A. That's correct.

10 Q. Okay. If you would look at what's numbered  
11 page No. 2, Removal Action Objectives, the first solid  
12 bulleted statement there says, as far as the objectives  
13 for the TCRA, that it's to stabilize the waste pits to  
14 withstand forces sustained by the river. You see that?

15 A. Yes.

16 Q. And it goes in that next subparagraph to  
17 say -- state that source materials are considered to be  
18 highly toxic located within the original 1966 berm  
19 footprint.

20 Now, do you agree with these statements  
21 that, one, that the objective of the TCRA is to  
22 stabilize the pits to withstand the forces sustained by  
23 the river?

24 MR. BALLARD: Objection. Form.

25 A. So this sort of goes back to the action

1 memorandum and the AOC. This language in this  
2 section -- and it says in the first sentences -- As  
3 presented in the Action Memorandum (USEPA 2010, Appendix  
4 A), these are taken directly quotation, word for word, I  
5 think, from their action memorandum. So they don't  
6 express an opinion other than EPA's opinion. And I  
7 don't have any basis or agree or disagree with those  
8 statements.

9 Q. Okay. So to the extent any of the statement  
10 in this -- in this document or in any of the other  
11 documents are -- cite back to EPA documents, you just  
12 aren't going to have an opinion one way or the other as  
13 to whether they're correct or not?

14 A. I don't have an opinion or whether I agree or  
15 disagree with them.

16 Q. Is there a distinction in your mind between  
17 whether you agree or disagree with the statement and  
18 whether it is or is not factually correct?

19 A. I don't know what EPA was thinking or who  
20 wrote these statements. As to their factual  
21 correctness, I don't have an opinion about that.

22 Q. Let's look at page 6. And Section 2.1 under  
23 the Site Hydrodynamic Conditions, in that first  
24 paragraph it states that the average flow in the river  
25 is 2200 cubic feet per second, CFS. You see that?

1 A. Yes.

2 Q. Do you believe that statement is accurate?

3 A. Yes.

4 Q. Continues by saying that floods in the river  
5 primarily occur during tropical storms, e.g., hurricanes  
6 or intense thunderstorms, extreme flood events, return  
7 intervals of 25 years or more, have flow rates of  
8 200,000 cubic feet per second or greater.

9 Do you agree with that statement as being  
10 an accurate reflection of the conditions?

11 MR. BALLARD: Objection. Form.

12 A. That is a statement that was written by part  
13 of our team, and I have no reason to disagree with it.

14 Q. What about the statement about the October  
15 1994 flood had a peak discharge of 360,000 cubic feet  
16 per second? Do you believe that to be an accurate  
17 statement?

18 MR. BALLARD: Object to the form.

19 A. I don't have any reason to believe that it's  
20 not accurate.

21 Q. And what about the statement about the stage  
22 height during the October 1994 flood being maximum of 27  
23 feet above mean sea level? Do you believe that to be  
24 accurate?

25 MR. BALLARD: Object to form.

1           A.    I don't have any reason to believe it's not.

2           Q.    Did somebody within your team do the research  
3 to come up with the numbers for this paragraph?

4           A.    I believe so. And I think parts of it are  
5 probably based on agency records, and things like that.

6                   MR. BALLARD: I'm going to object to the  
7 form and responsiveness.

8                   THE REPORTER: Say it again.

9                   MR. BALLARD: Form and responsiveness.  
10 Objection.

11           Q.    Looking at page 7, let's look at Section 2.2  
12 of the physical conditions in the eastern cell. Do you  
13 believe that the physical conditions described in  
14 Section 2.2 for the eastern cell are accurate?

15                   MR. BALLARD: Objection. Form.

16           A.    Let me read Section 2.2.

17           Q.    Please.

18           A.    Yes.

19           Q.    What about the description of the physical  
20 conditions in the northwestern area in Section 2.3? Do  
21 you believe those are accurate?

22           A.    Let me read it real quick.

23           Q.    Sure.

24                   MR. BALLARD: Objection. Form.

25           A.    Yes.

1 Q. I'm sorry?

2 A. Yes.

3 Q. Yes, the description in 2.3 is accurate?

4 A. Yes.

5 Q. Okay. And then let's complete it by looking  
6 at 2.4, the physical conditions in the western cell. If  
7 you could read that and tell me if you believe that  
8 accurately reflects those conditions.

9 A. Yes.

10 MR. MUIR: Pass the witness.

11 EXAMINATION

12 BY MR. BALLARD:

13 Q. I've got just a couple of questions. Just to  
14 follow up on the exhibit that counsel was just on and  
15 specifically Slowiak 4 under 2.2 --

16 A. Okay.

17 Q. -- counsel asked you about first paragraph in  
18 2.2 and whether it was accurate. Do you remember that  
19 question?

20 A. Yes.

21 Q. He didn't ask you about the second paragraph,  
22 which says, Source material in the eastern cell consists  
23 of clay varying from low to high plasticity. Is that  
24 description accurate?

25 MR. MUIR: Object to form.



1 A. Yes.

2 Q. And it goes on to say, Subsurface conditions  
3 at the site are described in more detail in Appendix J  
4 and consist of the soft surface source material (silt  
5 and clay) overlying sand -- do you see that, sir? --  
6 which overlies a hard clay formation. You see that?

7 A. Yes.

8 Q. Is that an accurate description?

9 A. Yes.

10 Q. And would clay and silt and clay prevent  
11 discharges from the impoundments, in your experience?

12 MR. MUIR: Object to form.

13 A. They can, yes.

14 Q. And why do you say that?

15 A. They're impermeable. They're cohesive.  
16 They're difficult to erode.

17 Q. Okay. And was there any evidence of  
18 groundwater contamination from this site?

19 A. No.

20 Q. And what does that tell you?

21 MR. MUIR: Object to form.

22 A. That there's -- not soluble.

23 Q. What's not soluble?

24 A. The contaminants of concern at the site,  
25 contaminants at the site, chemicals at the site. We

1 didn't see any evidence of any groundwater transport.

2 Q. Because they're not soluble. Is that what you  
3 said?

4 MR. MUIR: Object to form.

5 A. That, and also the local geology of the area,  
6 local materials.

7 Q. Now, you've testified that the protective cap  
8 was completed as of July of 2011. Is that right?

9 A. Yes.

10 Q. Okay. After you finished your work in  
11 installing the protective cap, did you ever receive  
12 correspondence from Harris County praising the work you  
13 had done on behalf of IP and MIMC?

14 A. Yes.

15 Q. I'd like to have that marked as the next  
16 exhibit. I'm not sure what exhibit we're on.

17 (Exhibit 465)

18 Q. Showing you what's been marked as Exhibit 465,  
19 could you describe that for the jury, please, identify  
20 it?

21 A. It's a letter from Jack Morman, who, I  
22 believe, is a county commissioner for Harris County to  
23 me thanking me for the work done at San Jacinto. And  
24 then there's a resolution and a photograph in  
25 commissioners' court that includes people that

1 participated into the project up to that point.

2 Q. Okay. And could you just read the final  
3 paragraph of the letter to yourself from Jack Mormon,  
4 commissioner of Harris County Precinct 2?

5 A. It says thank you so much for your hard work  
6 on behalf of the residents of Harris County. I  
7 appreciate you coming to downtown for commissioners'  
8 court and look forward to working with you and your team  
9 in the years ahead.

10 Q. All right. And then going on to the  
11 resolution that was passed by Harris County, could you  
12 read to the jury what that resolution says starting with  
13 "Be it resolved"?

14 A. Be it resolved, that Harris County  
15 Commissioners Court hereby offers this resolution as  
16 demonstrated by our official signatures below  
17 recognizing the hundreds of individuals, organizations,  
18 government agencies, and elected officials who have  
19 worked tirelessly against -- and against all odds to  
20 make significant progress in the cleanup of the San  
21 Jacinto River Waste Pits Superfund site.

22 Q. Okay. And when was that issued by Harris  
23 County?

24 A. July 12th, 2011.

25 Q. And that included your work -- that resolution

1 and the praise contained therein included your work on  
2 behalf of MIMC and IP?

3 MR. MUIR: Object to form.

4 A. That's correct.

5 Q. And going on to the next page, there is a  
6 picture denominated Harris County Commissioners Court,  
7 July 12th, 2011. Is that right?

8 A. Yes.

9 Q. What does it say below the picture?

10 A. Precinct 2 Commissioner Jack Mormon presents a  
11 resolution recognizing the hundreds of individuals,  
12 organizations, government agencies, and elected  
13 officials who have worked tirelessly to make significant  
14 progress in the cleanup of the San Jacinto River Waste  
15 Pits Superfund Site.

16 Q. And are some of those individuals depicted in  
17 the picture?

18 A. Yes.

19 Q. And do those individuals include yourself?

20 A. Yes.

21 Q. Where are you?

22 A. On the right-hand side, the sixth person in.

23 Q. Okay. And who's standing right next to you on  
24 your right?

25 A. That's March Smith.

1 Q. Okay. And he was the MIMC representative that  
2 you worked with?

3 A. Yes.

4 Q. Okay. Who is standing in the middle of the  
5 picture presenting this resolution praising MIMC, you,  
6 and other individuals?

7 MR. MUIR: Object to form.

8 A. I honestly can't recognize them from this  
9 photograph. Sorry.

10 Q. Okay. The guy holding the piece of paper, do  
11 you recognize that individual as Vince Ryan?

12 MR. MUIR: Object. Form. Asked and  
13 answered.

14 A. It does looks like Vince Ryan.

15 Q. And did Harris County ever indicate to you,  
16 while you were working to remediate the site, that it  
17 would sue your clients after they were finished with  
18 that work?

19 MR. MUIR: Object to form.

20 A. No.

21 Q. Okay. And is it your understanding -- who  
22 brought that lawsuit, according to your understanding?

23 MR. MUIR: Object to form.

24 A. To my understanding, it's Harris County.

25 Q. Harris County represented by Vince Ryan?

1           A.     Yes.

2                   MR. BALLARD:   Okay.   We'll reserve the  
3 rest of our questions till time of trial.

4                   MR. STANFIELD:   Reserve till time of  
5 trial.

6                   MR. MUIR:   I've got a few follow-up  
7 questions.

8                               FURTHER EXAMINATION

9 BY MR. MUIR:

10          Q.     Looking at the resolution that's marked  
11 Exhibit -- is it 465?

12          A.     Yes.

13          Q.     -- after the last "whereas," it says the  
14 following entities have been involved in the site  
15 cleanup coordination and process, and then it starts a  
16 list there. Do you see that?

17          A.     Yes.

18          Q.     Includes the Harris County attorney and staff.  
19 Correct?

20          A.     Yes.

21          Q.     The U.S. Environmental Protection Agency.  
22 Correct?

23          A.     Yes.

24          Q.     Texas Department of Transportation?

25          A.     Yes.

1 Q. The Texas Department of Health and -- Health  
2 State Services?

3 A. Yes.

4 Q. The Federal and State Natural Resources  
5 Trustees?

6 A. Yes.

7 Q. The Texas Commission on Environmental Quality?

8 A. Yes.

9 Q. The Texas Parks and Wildlife Department, the  
10 Texas General Land Office, the National Oceanic and  
11 Atmospheric Administration, and the U.S. Fish & Wildlife  
12 Service to. Correct?

13 A. That's correct.

14 Q. And all of those parties listed before have  
15 been your clients, McGinnes and International Paper.  
16 Correct?

17 A. As I said, it's always been a collaborative  
18 process.

19 Q. Also lists the Houston/Galveston Area Council,  
20 the Galveston Bay Foundation, the Port of Houston  
21 Authority, and the U.S. Army Corps of Engineers as part  
22 of that group. Correct?

23 A. Yes.

24 Q. And the Harris County Public Health &  
25 Environmental Services and the Harris County Public

1     InfraStructure Department and the Harris County  
2     Pollution Control Services and Harris County Precinct 2.  
3     All those people are also included in this resolution.  
4     Correct?

5             A.     That is correct.

6             Q.     Do you understand, sir, that the lawsuit that  
7     was brought by Harris County does not seek penalties for  
8     anything done in connection with the work on the site  
9     itself?

10            A.     I don't -- I don't know the details of the  
11     lawsuit.

12            Q.     Have you reviewed the -- any of the pleadings  
13     in the lawsuit?

14            A.     No.

15            Q.     You were just told who brought the lawsuit so  
16     you could answer here today.   Correct?

17                   MR. BALLARD:   Object to the form.

18            A.     I don't think I was told specifically for that  
19     reason.   I just -- I think it's a matter of public  
20     record.

21                   MR. MUIR:   Pass the witness.

22                                 FURTHER EXAMINATION

23     BY MR. BALLARD:

24            Q.     He left out a couple of entities that have  
25     been involved in the site cleanup coordination and



1 process. Those also included, and as listed in Harris  
2 County's resolution, McGinnes Industrial Maintenance  
3 Corporation and International Paper Company. Is that  
4 right?

5 A. That's correct.

6 Q. He also includes Anchor QEA, the entity that  
7 you work for. Correct, sir?

8 A. That's correct.

9 Q. And did you work collaboratively -- did MIMC,  
10 Anchor QEA, and International Paper work collaboratively  
11 with all these other entities to get this cleaned up?

12 A. Yes.

13 Q. Okay. And were you ever told that your  
14 clients would be penalized for doing so?

15 A. No.

16 Q. All right.

17 MR. BALLARD: We'll reserve the rest of  
18 our questions till time of trial.

19 EXAMINATION

20 BY MR. STANFIELD:

21 Q. Dr. Keith, in looking at the --

22 THE VIDEOGRAPHER: Can you grab the mike,  
23 please?

24 Q. Dr. Keith, in looking at that resolution in  
25 the -- that "whereas" before they list all the entities

1     you work for, would you look there real quick?

2             A.     Uh-huh.

3             Q.     At the bottom of that resolution, it talks  
4     about that there's a physical protective barrier for the  
5     waste site that could last for seven to ten years. Do  
6     you see that?

7             A.     Where is that?

8             Q.     In the resolution, next to last "whereas"  
9     clause.

10            A.     Yes.

11            Q.     Now, I think we talked about this earlier.  
12     The cap that's out there is actually designed to  
13     withstand a 100-year flood event. Is that accurate?

14            A.     Actually, it's been shown to be capable of  
15     withstanding a 500-year storm event or flood event.

16            Q.     Oh, gosh. Where this says seven to ten years,  
17     are you saying that it could probably actually  
18     withstand, gosh, what is that, 50 times the max listed  
19     there?

20                   MR. MUIR: Object to form.

21            A.     50 times ten. Yeah.

22            Q.     Yeah. Would you turn to the photo real quick.  
23     You said, I think, earlier there's a gentleman on the  
24     front row that looks like Vince Ryan. Is that what you  
25     said?

1 MR. MUIR: Objection to form.

2 A. Yes.

3 Q. Is he the guy with the big smile on his face  
4 holding the resolution?

5 A. Yes.

6 Q. Do you understand that Vince -- do you have  
7 any understanding as to whether Vince Ryan is an elected  
8 official here in Harris County?

9 MR. MUIR: Object to form.

10 A. My understanding is that he's an elected  
11 district attorney.

12 Q. County attorney?

13 A. County attorney.

14 Q. And he put himself on the front row of this  
15 picture. Is that what it looks like, sir?

16 MR. MUIR: Object to form.

17 A. He's on the front row.

18 Q. And he's holding the resolution that we were  
19 just looking at. Is that what it looks like to you,  
20 sir?

21 A. That's what it looks like.

22 Q. And then next to him on his right and to the  
23 left of the photo, who is that young woman that we're  
24 seeing?

25 A. Snahah (phonetic) Patel.

1 Q. And did you work with Ms. Patel during the  
2 course of your work on this project?

3 A. Yes.

4 Q. And did you communicate with her about the  
5 work that you did on the project?

6 A. Yes.

7 Q. And you never understood that any of your  
8 communications with her -- to your knowledge, did you  
9 understand that your communications with her were  
10 privileged in any way?

11 MR. MUIR: Object to form.

12 Q. And what I mean by that is, Do you understand  
13 that -- did you understand that Harris County would  
14 assert any sort of privilege over your communications  
15 with Ms. Patel?

16 MR. MUIR: Object to form.

17 A. No.

18 Q. And did you have any -- to your recollection,  
19 did Ms. Patel send any correspondence related to the  
20 work she was doing on the site that you ever saw or  
21 received?

22 A. I'm sorry. Say that again.

23 Q. Yeah. Did you ever see any e-mails or  
24 letters, or things of that nature, that Ms. Patel said  
25 related to the site?

1           A.    I think I did, yes.

2           Q.    And she never, as far as you remember, said  
3 anything with those to state that what she was doing was  
4 privileged, to your memory, did she?

5                       MR. MUIR:  Object to form.

6           A.    No.

7                       MR. STANFIELD:  All right.  I'll pass the  
8 witness.

9                               FURTHER EXAMINATION

10          BY MR. MUIR:

11           Q.    You were asked by counsel for Waste Management  
12 if you were aware that your clients, MIMC and  
13 International Paper, were going to be sued after their  
14 work was done.  The work at the site is not complete to  
15 date, is it?

16                       MR. BALLARD:  Object to the form.

17           A.    The RI/FS is not complete.  That's correct.

18           Q.    And the final remedy hasn't been selected.  
19 Correct?

20           A.    That is correct.

21           Q.    There's certainly been no implementation of  
22 the final remedy at the site.  Correct?

23           A.    That's correct.

24           Q.    So as the first page of Exhibit 465 says, we  
25 have a long way to go.  Correct?  In 2011, there was a

1 long way to go before completing work at this site.

2 Correct?

3 A. The sentence says we have a long way to go,  
4 yes.

5 Q. Okay. But wouldn't you agree, sir, that in  
6 July of 2011 there was certainly a long way to go as far  
7 as to completing the work at the site?

8 MR. BALLARD: Object to form.

9 A. I don't know what they mean by a long way to  
10 go. I don't know what that -- Mr. Mormon meant by that  
11 statement. We had additional work to do, yes.

12 Q. And when you were asked about the statement in  
13 the next to last "whereas" paragraph on the  
14 resolution -- let's look at that. It says the EPA, in  
15 conjunction with Harris County and stakeholders,  
16 implemented a short-term action to contain the  
17 continuous discharge of dioxin into the waterways, which  
18 includes building a temporary physical protective  
19 barrier over the waste site that could last for seven to  
20 ten years. Okay? You see that?

21 A. That's what it says.

22 Q. There isn't a reference in that to something  
23 surviving a 10-year storm event or any particular size  
24 storm event, is there, sir?

25 A. No.

1 MR. MUIR: Nothing further.

2 FURTHER EXAMINATION

3 BY MR. BALLARD:

4 Q. Is the protective cap in place, sir?

5 A. Yes.

6 Q. Okay. Is anything else needed to prevent  
7 discharges from this site?

8 MR. MUIR: Object to form.

9 A. From the northern impoundments? I don't think  
10 so.

11 Q. Okay. And if it's able to withstand 500  
12 years, do you think anything more needs to be done in  
13 that regard?

14 MR. MUIR: Object to form.

15 A. In the feasibility study, we have alternatives  
16 that include additional -- even additional enhancements  
17 above and beyond what's there now.

18 Q. And those are just precautionary. Right?

19 MR. MUIR: Object to form.

20 Q. But in the scheme of things, they are not  
21 needed to prevent discharges?

22 MR. MUIR: Object to form.

23 A. That's accurate.

24 MR. BALLARD: We'll reserve the rest of  
25 our questions.

1 MR. STANFIELD: Reserve the rest of my  
2 questions.

3 FURTHER EXAMINATION

4 BY MR. MUIR:

5 Q. Sir, are you saying there has been a 500-year  
6 storm event since the cap has been in place?

7 A. No.

8 Q. Okay. So when you made reference to that it's  
9 been shown that it can survive a 500-year storm event,  
10 that's not been from any kind of actual occurrence  
11 that's happened at the site?

12 A. No. I think what I said -- maybe I didn't say  
13 it correctly -- it's been shown that it's been designed  
14 to withstand a 500-year storm event or flood event.

15 Q. And ultimately, sir, EPA will make the  
16 decision as to what the final remedy at the site is.  
17 Correct?

18 A. That's correct.

19 MR. MUIR: Nothing further.

20 THE VIDEOGRAPHER: Anything else? Off  
21 the record at 5:22.

22 (Proceedings concluded at 5:21 p.m.)

23

24

25



1 Changes and Signature to Deposition of DAVID KEITH

2 Deposition Date: April 23, 2014

3 PAGE LINE CHANGE REASON

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25 \_\_\_\_\_

I, DAVID KEITH, have read the foregoing  
deposition and hereby affix my signature that same is  
true and correct, except as noted above.

\_\_\_\_\_  
DAVID KEITH

THE STATE OF \_\_\_\_\_)  
COUNTY OF \_\_\_\_\_)

Before me, \_\_\_\_\_, on  
this day personally appeared DAVID KEITH, known to me  
(or proved to me under oath or through  
\_\_\_\_\_) to be the person whose name is  
subscribed to the foregoing instrument and acknowledged  
to me that they executed the same for the purposes and  
consideration therein expressed.

Given under my hand and seal of office this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
The State of \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

CAUSE NO. 2011-76724

HARRIS COUNTY, TX, ET	}	IN THE DISTRICT COURT OF
AL.,	}	
Plaintiff,	}	
v.	}	HARRIS COUNTY, TEXAS
INTERNATIONAL PAPER	}	
COMPANY, ET AL.,	}	
Defendants.	}	295th JUDICIAL DISTRICT

CAUSE NO. 2012-58016

DAO VAN PHO, ET AL.,	}	IN THE DISTRICT COURT OF
Plaintiffs,	}	
v.	}	HARRIS COUNTY, TEXAS
INTERNATIONAL PAPER	}	
COMPANY, ET AL.,	}	
Defendants.	}	125th JUDICIAL DISTRICT

CAUSE NO. 2012-66308

JIM HARPSTER AND	}	IN THE DISTRICT COURT OF
JENNIFER HARPSTER, ET	}	
AL.,	}	
Plaintiffs,	}	
v.	}	HARRIS COUNTY, TEXAS
INTERNATIONAL PAPER	}	
COMPANY, ET AL.,	}	
Defendants.	}	11th JUDICIAL DISTRICT

Reporter's Certification  
DEPOSITION OF DAVID KEITH  
April 23, 2014

I, Janet G. Hoffman, Certified Shorthand Reporter  
in and for the State of Texas, hereby certify to the  
following:

That the witness, DAVID KEITH, was duly sworn by

1 the officer and that the transcript of the oral  
2 deposition is a true record of the testimony given by  
3 the witness;

4 That the deposition transcript was submitted on  
5 \_\_\_\_\_ to the witness or to the  
6 attorney for the witness for examination, signature and  
7 return to me by \_\_\_\_\_;

8 That the amount of time used by each party at the  
9 deposition is as follows:

10 JOHN MUIR - 05:31  
11 CRAIG STANFIELD - 00:03  
12 GLENN BALLARD - 00:09

13 That pursuant to information given to the  
14 deposition officer at the time said testimony was taken,  
15 the following includes counsel for all parties of  
16 record:

17 JOHN MUIR, Attorney for Plaintiff;  
18 ROCK OWENS, Attorney for Plaintiff;  
19 ALBERT AXE, Attorney for Defendant;  
20 BRUCE WILKIN, Attorney for Defendant;  
21 GLENN BALLARD, Attorney for Defendant;  
22 JOHN RILEY, Attorney for Defendant;  
23 KNOX NUNNALLY, Attorney for Defendant;  
24 CRAIG STANFIELD, Attorney for Defendant.

25 I further certify that I am neither counsel for,  
related to, nor employed by any of the parties or  
attorneys in the action in which this proceeding was  
taken, and further that I am not financially or  
otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule  
203 of TRCP will be certified to after they have  
occurred.

Certified to by me this \_\_\_\_\_ of May, 2014.

---

Janet G. Hoffman  
Texas CSR No. 4208  
Expiration Date: 12/31/15

Johnston Reporting Service  
Firm Registration No. 110  
P. O. Box 540325  
Houston, Texas 77254  
(713) 522-8585  
jan1112j@swbell.net

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on \_\_\_\_\_;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to JOHN MUIR, Custodial Attorney;

That \$\_\_\_\_\_ is the deposition officer's charges to the Plaintiff for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein and filed with the Clerk.

Certified to by me this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Janet G. Hoffman  
Texas CSR No. 4208  
Expiration Date: 12/31/15

Johnston Reporting Service  
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